

**Army Federal Acquisition Regulation
Supplement
OCTOBER 2001**

AFARS -- Part 5101

Federal Acquisition Regulation System

Subpart 5101.1 -- Purpose, Authority, Issuance

5101.101 -- Purpose.

(a) The Army Federal Acquisition Regulation Supplement (AFARS) implements and supplements the Federal Acquisition Regulation (FAR) and the Department of Defense FAR Supplement (DFARS) to establish uniform policies for Army acquisition. It does not restrict the exercise of good business judgment or stifle innovation. .

5101.105-3 Copies.

The AFARS is available electronically via the Internet at <http://acqnet.saalt.army.mil>.

Subpart 5101.2 -- Administration

5101.290 -- Routing of Documents and Mailing Addresses.

- (a) Unless otherwise prescribed in FAR, DFARS, or AFARS, documents relating to contracting matters that require higher authority involvement must be sent through contracting channels and be signed by the Head of the Contracting Activity (HCA) or the HCA's Principal Assistant Responsible for Contracting (PARC).

- (b) Addresses which are used frequently follow:

- (1) Deputy Assistant Secretary of the Army for Procurement (SAAL-ZP), 103 Army Pentagon, Washington DC 20310-0103.

- (2) Headquarters, Department of the Army, Attn: SAAL-PC, Skyline 6, Suite 302, 5109 Leesburg Pike, Falls Church, VA 22041-3201.

- (3) Headquarters, Department of the Army, Attn: SAAL-PP, Skyline 6, Suite 302, 5109 Leesburg Pike, Falls Church, VA 22041-3201.

- (4) Headquarters, Department of the Army, Attn: SAAL-PS, Skyline 6, Suite 302, 5109 Leesburg Pike, Falls Church, VA 22041-3201.

- (5) Headquarters, Department of the Army, Attn: SAAL-PA, Skyline 6, Suite 302, 5109 Leesburg Pike, Falls Church, VA 22041-3201.

(6) Office of the Assistant Secretary of the Army (Financial Management), 109 Army Pentagon, Attn: SAFM-CL, Washington, DC 20310-0109.

(8) Office of the Chief of Legislative Liaison (OCLL), Attn: SALL-SPA, 1600 Army Pentagon, Washington, DC 20310-1600.

(9) Chief, Procurement Fraud Division (DAJA-PF), Office of the Judge Advocate General, Department of the Army, Suite 400, 901 N. Stuart Street, Arlington, VA 22203-1837.

(10) Office of the Command Counsel, Headquarters U.S. Army Materiel Command, Attn: AMCCC-P, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.

(11) U.S. Army Corps of Engineers, Attn: CEPR-ZA, 20 Massachusetts Avenue NW, Washington, DC 20314-1000.

(12) Chief, Army Power Procurement Office, US Army Center for Public Works (CECPW-C), 7701 Telegraph Road, Alexandria, VA 22315-3862.

Subpart 5101.3 -- Agency Acquisition Regulations

5101.301 -- Policy.

(a) The AFARS is issued under the authority of FAR 1.301 and DFARS 201.304 by the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)).

(b) The Army has been assigned Chapter 51 of Title 48 of the Code of Federal Regulations (CFR). Supplements to the FAR issued by the Army must insert the number "51" before the primary citation. If the primary citation is to a single digit part number, a zero is also inserted.

(c) When a proposed policy, procedure, clause, or form must be published in the *Federal Register*, the proposed notice should be formatted in accordance with DFARS 201.402(2) and 201.201-1(d)(i) and sent with the request for approval (5101.304(a)(2)) or the request for deviation (5101.402).

(i) The Office of the Deputy Assistant Secretary of the Army for Procurement (ODASA(P)) is the point of contact to coordinate the proposed notice, forward it to the *Federal Register*, answer questions, and receive public comments. At the close of the public comment period, the ODASA(P) will send all comments received to the originator of the notice for analysis.

(ii) When the analysis is completed, the originator must --

(A) Send an updated request for deviation in accordance with 5101.402; or

(B) Send an updated request for approval (which does not involve a deviation) in accordance with 5101.304(a)(2); and

(C) Include the results of publication and analysis under the heading “IV. Collaterals.”

5101.303 -- Publication and Codification.

(a)

(iii) Subsection numbers 90-99 are reserved for AFARS supplementary material with no FAR or DFARS counterpart. Numbers 9000 and above are reserved for supplementary clauses. HCAs implementing the FAR, DFARS, or AFARS must follow the rules of the FAR System except that numbers 100-199 are reserved for major command (MACOM) unique implementing material with no counterpart in higher-level regulations. Numbers 200 and above are reserved for Army Materiel Command (AMC) major subordinate command unique implementing material with no counterpart in higher-level regulations. For numbering provisions and clauses, see 5152.101.

5101.304 -- Agency Control and Compliance Procedures.

(1) There can be **no** supplementation of the FAR except as provided herein. HCAs must ensure that all contracting activity acquisition instructions and regulations are in compliance with FAR, DFARS, and this AFARS. HCAs may issue acquisition instructions as necessary to implement FAR, DFARS, and AFARS without prior HQDA approval with the exceptions of --

(A) Those which require the approval of the Under Secretary of Defense (Acquisition, Technology and Logistics) or Director, Defense Procurement (per DFARS 201.304);

(B) Any implementation of FAR Part 22, DFARS 222, or AFARS Part 5122 unless the AFARS specifically provides otherwise; and

(C) Any implementation of FAR Part 32, DFARS Part 232, or AFARS Part 5132.

(2) Format requests for approval in accordance with DFARS 201.201-1(d)(i), I through IV, adapting the language as necessary to apply to implementing coverage instead of revisions. See 5101.301(b) also.

(3) See 5101.402 for procedures for processing a request for class deviation.

(4)

(A) Requests for approval of nonstandard clauses or provisions which are deviations, one time, and recurring, must be processed in accordance with

5101.4. See 5101.301(c) for guidance concerning clauses that must be published in the *Federal Register*.

(5) Notices of all AFARS revisions will be issued electronically to all PARCs. The official copy of the AFARS will be kept electronically on the Army Acquisition website, sponsored by the Deputy Assistant Secretary of the Army (Procurement) at <http://acqnet.saalt.army.mil>.

Subpart 5101.4 -- Deviations From the FAR

5101.402 -- Policy.

(1)

(ii) The ASA(AL&T) approves class deviations to the FAR and DFARS. This authority does not extend to --

(A) Deviations with a significant cost or administrative impact on contractors or offerors, or have a significant effect beyond the internal Army operating procedures;

(B) Deviations identified in DFARS 201.402(1)(i); or

(C) Requirements imposed by statute or directives of other agencies (e.g., the Small Business Administration and the Department of Labor).

(3)

(A) All FAR, DFARS, and AFARS deviation requests should be prepared in accordance with DFARS 201.402(2). Follow the procedures at 5101.301(c) when the deviation must be published in the *Federal Register*,

5101.403 -- Individual Deviations.

(1) Only PARCs may approve individual deviations to FAR, DFARS, and AFARS. This authority does not extend to areas set forth in DFARS 201.402; to any provisions which limit approval authority to a level higher than a HCA; and to any provisions based upon statute or Executive Order unless such authority provides for waiver.

(2) Send one copy of each deviation to the addressee at 5101.290(b)(4) at the time the deviation is granted.

(3) The contracting activity shall assign a control number to each deviation authorized.

Subpart 5101.6 -- Career Development, Contracting Authority and Responsibilities

5101.601 -- General.

- (1) Army contracting activities are listed in DFARS 202.101.
- (2) HCAs and other contracting officials may re-delegate their contracting authority when consistent with higher-level regulations and directives.
- (3) *Secretarial delegations of authority and redelegations.* Delegations or re-delegation must reference the applicable AFARS citation. Expiration dates may be included; otherwise, the delegations and re-delegations stay effective until superseded or canceled.

(4) *HCA responsibilities.*

- (i) Each HCA must ensure all purchases subject to provisions of FAR, DFARS, and AFARS are made by contracting officers selected and appointed in accordance with 5101.603.)
- (ii) Each HCA must appoint a Principal Assistant Responsible for Contracting (PARC). When selecting the PARC, the HCA must comply with the requirements of DODI 5000.58 governing selection of senior contracting officials.
 - (A) PARCs will be the senior staff official of the contracting function within the contracting activity.
 - (B) The PARC shall head an organizational element reporting directly to the HCA. Waivers to this requirement can only be approved by the DASA(P). Requests for a waiver must contain adequate rationale justifying the placement of the PARC in a position other than one reporting directly to the HCA.
 - (C) The PARC must be assigned, or have direct access to, the personnel and other essential resources necessary to perform all the functions assigned or delegated by the HCA.
 - (D) For contracting officers, the HCA shall establish appropriate business clearance procedures to ensure compliance with AFARS Subpart 5115.406.
- (iii) The following HCAs must perform the functions of an HCA for the additional offices designated:
 - (A) Assistant Deputy Chief of Staff for Research, Development and Acquisition (Acquisition, Contracting and Program Management), Headquarters, U.S. Army Materiel Command, for the U.S. Military Academy, U.S. Army Soldier and Biological Chemical Command, and

Office of the Program Manager, Saudi Arabia National Guard
Modernization Program (PM SANG).

(B) Commander, U.S. Army Training and Doctrine Command for The
Judge Advocate General's School.

(C) Commander, U.S. Army Military District of Washington for the
National Defense University.

(D) Commander, U.S. Army Communications-Electronics Command for
the 5TH Signal Command -- Mannheim, FRG; BASECOM Army Signal
Command -- Ft. Huachuca, AZ.

(5) ***PARC responsibilities.*** PARCs must --

(i) Carry out those delegable authorities of the HCA except when the HCA
elects to exercise selected authorities; and

(ii) Head and oversee organizational element reporting directly to the HCA
unless an exception has been approved by HQDA.

(iii) Notify Headquarters, Department of the Army, ATTN: SAAL-PA, Skyline
6, Suite 302, 5109 Leesburg Pike, Falls Church, VA 22041-3201 when there is a
newly assigned HCA or PARC.

5101.602 -- Contracting Officers.

5101.602-1 -- Authority.

(b) The office of the contracting officer must be organizationally situated to minimize
any potential for undue influence and protect contracting officers from intra-
organizational pressure to perform improper acts.

(c) Personnel in the 1101 job classification series are prohibited from being appointed or
serving as Contracting Officers. This requirement is not waivable on either an individual
or class basis.

(d) Commanders and others having administrative supervision over contracting officers
must bear in mind that actions exceeding the authority of a contracting officer are not
binding on the Government. Therefore, they shall not direct, or otherwise exert
influence, upon a contracting officer(s) to take such actions.

5101.602-1-90 -- Departmental Review and Secretarial Approval.

(a) Awards may require review and notation at the HQDA level. Preaward or postaward
review or both will be directed by the Office of the ASA(ALT) on an individual basis.

(b) Whenever the Office of the ASA (ALT) or the Office of the USD (AL&T) are to be briefed on an award, send all documents at least five working days prior to scheduled briefings.

(d) When the Office of the ASA (ALT) directs an abbreviated Secretarial review and notation for certain aspects of an acquisition which are of special interest, that office will identify the areas of special interest and the information required and advise whether or not a briefing is required.

5101.602-2 -- Responsibilities.

Contracting Officers must validate Contracting Officer Records and Ordering Officer Records every 12 months to ensure compliance with the terms of the contract. A written record of the review is to be placed in the contract file.

(a)

(i) Except as authorized in FAR Subparts 17.1 and 32.7 and in (ii) and (iii), before issuing a solicitation, the contracting officer must have a written statement (or equivalent) indicating that sufficient funds are available.

(ii) Solicitations may be issued for high priority requirements and RDT&E incrementally funded contracts before ensuring availability of funds when there is a high probability that the requirement will not be canceled. For foreign military sales cases, solicitations may be issued after the submission of an offer, but before assurance of funds availability when the initiating and approving authorities determine that the offer appears certain to be accepted.

(A) The contracting officer shall not issue a solicitation under the circumstances in (a)(ii) unless the comptroller or designee has signed the following statement on the purchase request:

“This requirement is included or provided for in the financial plan for FY _____. The accounting classification will be _____. This statement is not a commitment of funds.”

(B) The contracting officer shall include the following statement in all solicitations issued pursuant to this authority when the clause at FAR 52.232-18, Availability of Funds, is not used.

“Funds are not presently available for this acquisition. No contract award will be made until appropriated funds are made available.”

(C) No contract shall be awarded nor shall a prospective contractor be notified of a pending award until funds have been certified to be available by the operating

official designated by local regulations or by a “delegation of authority” letter as the official authorized to certify to funds availability.

(D) No solicitation shall be issued for a contract for research and development which is to be incrementally funded over successive years unless planned funds (Future Years Defense Plan (FYDP)) are sufficient to accomplish it. An exception may be approved by the HCA, provided the approval identifies steps to be taken to revise the approved FYDP to include adequate resources.

(iii) Industrial-funded public activities need not comply with (i) and (ii) when issuing solicitations to support offers they will send under the Defense Depot Maintenance Competition Program (P L 102-396), the Partnership Program (10 U.S.C.2208(j)) or competition under the Arsenal Act (10 U.S.C.4532(a)). See 5117.9101.

(c) **Legal Participation.** Contracting Officers’ use of legal specialists shall be guided by the following:

- (i) Legal counsel shall participate as a member of the contracting officer’s team throughout the acquisition process.
- (ii) Legal counsel shall review proposed contracting actions in accordance with locally established procedures and as otherwise required by law, regulation, or policy. While it is not practicable to specify, in the AFARS, an inclusive list of actions requiring legal review at each contracting activity, the expectation is that counsel shall routinely review a full range of acquisition-related actions that have potential legal significance. PARCs and chief counsels shall develop specific legal review protocols that are consistent with this provision.
- (iii) Legal counsel shall advise whether a proposed action is legally sufficient with details and a recommended course of action to resolve any insufficiency. Contracting officers shall address and resolve counsel’s objections at the lowest possible level. Unresolved objections shall be jointly elevated within the acquisition and legal channels, and, in exceptional cases, brought to the attention of the HCA.
- (iv) Legal sufficiency shall relate to areas of statute, regulation, and policy. The Contracting Officer retains sole authority to determine matters that relate to the exercise of business judgment.

5101.602-3 -- Ratification of Unauthorized Commitments.

(b) **Policy.**

(3) HCAs may ratify unauthorized commitments and delegate this authority no lower than to the chiefs of contracting offices. -

- (A) \$100,000 or less to a PARC; and
- (B) \$10,000 or less to chiefs of contracting offices.

(c)

(7) See 5101.602-3-90.

5101.602-3-90 -- Ratification Procedures.

(a) The individual making the unauthorized commitment must send relevant documentation to the individual's commander or senior staff officer designated for this purpose to include --

- (1) A signed statement describing the circumstances, the reason normal contracting procedures were not followed, what bona fide Government requirement necessitated the commitment, the benefit received, and its value and any other pertinent facts; and
- (2) All other relevant documents, including orders, invoices or other evidence of the transaction.

(b) If the commander or senior staff officer designated concurs that the commitment should be ratified, the documentation must be sent to the chief of the contracting office with an endorsement that --

- (1) Verifies the accuracy and completeness of the documentation;
- (2) Describes the measures taken to prevent a recurrence of unauthorized commitments, including a description of any disciplinary action to be taken; and
- (3) Provides a complete purchase description and funding for the ratifying contract.

(c) The chief of the contracting office will assign the action to an individual contracting officer who will be responsible for --

- (1) Reviewing the case and determining the adequacy of all facts, records, and documents and obtaining any additional material required; and

(2) Preparing a summary of facts to include a recommendation as to whether or not the transaction should be ratified and reasons for the recommendation. A recommendation not to ratify must include a recommendation as to whether or not the matter should be processed under FAR Part 50 and DFARS Part 250 (Pub. L. 85-804) as a GAO claim or in some other appropriate way.

(d) Upon receipt and review of the complete file, the individual responsible for approving the ratification may approve the ratification if it is considered to be in the best interest of the Government, or may direct other disposition.

(e) HCAs must monitor compliance with 5101.602-3-90 and take all necessary corrective action.

5101.603 -- Selection, Appointment, and Termination of Appointment.

5101.603-1 -- General.--

(1) In addition to the Secretary of the Army, the following may select, appoint, and terminate contracting officers:

(i) The ASA(AL&T) or designee.

(ii) The Deputy Assistant Secretary of the Army for Procurement (DASA(P)) or designee.

(iii) HCAs.

(2) PARCs when authorized by the HCA. (The Commander, USACE, may delegate contracting officer appointment authority to Division Commanders as deemed necessary for efficient operations.). HCAs and appointed PARCs may redelegate to chiefs of contracting offices under their jurisdiction with or without the power of redelegation.

5101.603-1-90—Other Individuals Authorized to Make Purchases.

(a) Individuals in (b)(1), (2) and (3) shall prepare and submit information for reporting purposes to the supporting contracting office as specified by that office. Individuals in (b)(4) shall normally report to the contracting office supporting the Mobilization Base.

(b) In addition to individuals identified in 1.602-2-91 and 1.603, other individuals may be authorized to make purchases as specified in (1) through (6).

(1) Individuals may be authorized by a contracting officer to place calls under blanket purchase agreements (see FAR and AFARS Subpart 13.2 and DFARS Subpart 213.2).

(2) Army aviators and masters of Army owned or operated vessels may make emergency purchases of supplies (e.g., fuels, oils, parts) and services (e.g., mechanical services, hanger services, landing and docking fees and employment of civilian guards or watchmen to safeguard Government property) using Standard Form 44 (see 13.505-3) or provisions of AR 710-2 and DA PAM 710-2-2 under any of the following conditions:

(i) Authorized flights or voyages during which mechanical or meteorological conditions prevent obtaining required supplies and services from Government facilities.

(ii) Conditions under which continuation of flight, voyage or mission would constitute a hazard to safety or endanger public property.

(iii) Conditions under which procurement of supplies and services from Government facilities would interfere with approved flight plans or voyages.

(3) Individuals to whom International Merchant Purchase Authorization Cards (I.M.P.A.C.) are issued may use them in accordance with Subpart 13.90.

(4) Individuals in Reserve Components may make purchases in event of mobilization using Standard Form 44 and FORSCOM Mobilization and Deployment System (FORMDEPS), Volume III. Reserve Component unit commanders are authorized to make over the counter type purchases not exceeding \$2,500 per transaction using Standard Form 44 in the event of a Federal Mobilization Order requiring movement of the unit to a mobilization station or site or where procurement support is not readily available from a supporting installation. This temporary authority shall expire upon resumption of procurement support by the contracting office at the mobilization station or supporting installation.

(5) Individuals to whom U.S. Government National Credit Cards are issued may use them while on official travel.

(6) Individuals authorized by AR 725-50 may order supplies from General Services Administration Stores Depots using MILSTRIP procedures.

5101.603-2 Selection

HCA's shall establish criteria and procedures to ensure that prospective contracting officers (above the Simplified Acquisition Threshold) have the knowledge and experience to effectively and efficiently support their customers and successfully fulfill their fiduciary responsibilities. As a minimum, selection criteria include:

(a) A successful track record as a contract specialist, cost/price analyst or contract administrator of a scope and complexity comparable to the acquisitions to be assigned.

(b) Business education and knowledge sufficient to understand the business operating cycle, financial and market analysis, and measures of corporate performance to effectively structure business arrangements that best meet the needs of the Government and the prospective contractor(s).

(c) Knowledge of acquisition and fiscal policies and procedures, including the panoply of acquisition instruments available to the Government, to effectively develop and execute acquisition and contracting strategies, and manage the resulting business arrangements.

(d) Compliance with Public Law 101-510, "National Defense Authorization Act for Fiscal Year 1991" Title XII, "Defense Acquisition Workforce Improvement Act," November 5, 1990, as amended by Public Law 106-398, "National Defense Authorization Act for Fiscal Year 2001," Section 808, "Qualifications Required for Employment and Assignment in Contracting Positions."

5101.690 Procurement Management Assistance.

HQDA will conduct the Procurement Management Assistance Program (PMAP) in accordance with Appendix CC. HCAs shall conduct onsite reviews of each of their satellite contracting offices to ensure compliance with laws, policies, regulations, directives, AFARS Appendix CC, etc. at a minimum, once every 24 months. Copies of Review Reports will be furnished to the HQDA PMAP Team Leader within 60 days of completing a review.

5101.690-1 Management Controls

Management controls within each contracting organization are an element of day-to-day operations. Appendix BB, Management Control Evaluation Checklist, is provided to assist managers at all levels in evaluating compliance with key management controls and to identify and correct weaknesses. Due to the volume of the test questions, it should not be construed that all questions are mandatory, nor all inclusive. The checklist should be supplemented to include areas specific to each contracting office, and should include the DASA(P) Areas of Special Interest, which are issued each fiscal year.

Subpart 5101.7 -- Determinations and Findings

5101.707 -- Signatory Authority.

Each Secretarial determination request must be signed by the contracting officer and HCA. See Subpart 5153.9003 for a sample Determination and Findings format.

Subpart 5101.90 -- Nonappropriated Funds

5101.9001 -- Policy.

DoD policy for contract actions using nonappropriated funds is in DoDD 4105.67. See AR 215-1 and AR 215-4 for implementing policies and procedures for Army nonappropriated fund acquisitions.

5101.9002 -- Contracting Authority.

Appropriated fund contracting officers may also be designated as nonappropriated fund contracting officers. See AR 215-4.

AFARS -- Part 5102

Definition of Words and Terms

Subpart 5102.1 -- Definitions

5102.101 -- Definitions.

“Army Acquisition Executive” is the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (SAALT) who also serves as the “Senior Procurement Executive.”

“Principal Assistant Responsible for Contracting” (PARC) is the individual assigned to a position the Head of the Contracting Activity (HCA) has established at the contracting activity level to accomplish contracting functions which FAR, DFARS, AFARS, or other directive does not require the HCA to perform personally. A PARC must be certified at Level 3 in the Contracting Career Field in accordance with the requirements of Public Law 101-510, “National Defense Authorization Act for Fiscal Year 1991,” Title XII, “Defense Acquisition Workforce Improvement Act,” November 5, 1990, as amended by Public Law 106-398, “National Defense Authorization Act for Fiscal Year 2001,” Section 808, “Qualifications Required for Employment and Assignment in Contracting Positions.”

“Chief of the Contracting Office” is the person having direct managerial responsibility for the operation of a contracting office as defined in FAR 2.1. A Chief of the Contracting Office may also be the PARC when so designated.

AFARS -- Part 5103

Improper Business Practices and Personal Conflicts of Interest

Subpart 5103.1 -- Safeguards

5103.104 -- Procurement Integrity.

5103.104-4 -- Definitions.

The General Counsel of the Army (SAGC), as the Army's designated agency ethics official, has delegated to the senior ethics counselor of each major command and of each field operating agency authority to provide consultation and advice under 5103.104-6(f) and 5103.104-8(e). This authority may be further delegated to other ethics counselors.

5103.104-7 -- Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(c) *Ethics advisory opinions.* The issuance of advice is reserved to an Ethics Counselor who has been delegated (or redelegated) such authority from the designated agency ethics official.

5103.104-10 -- Violations or Possible Violations.

(a)

(1) Send information and documentation to the chief of the contracting office.

(b) Upon receipt of information, the HCA or designee must take appropriate action after consulting with the contracting officer and legal counsel.

(f) Verify receipt of the notification by the agency head before authorizing award of the contract or execution of the contract modification.

Subpart 5103.2 -- Contractor Gratuities to Government Personnel

5103.201 -- Applicability.

This subpart establishes procedures pursuant to the Gratuities clause in FAR 52.203-3. To the extent practicable, hearings should be held concurrently with any debarment proceedings initiated. See FAR Subpart 9.4.

5103.203 -- Reporting Suspected Violations of the Gratuities Clause.

(a) When information is received indicating that action under the Gratuities clause may be appropriate, send it for evaluation and appropriate action to the military commander having jurisdiction over the contract (exempt report, AR 335-15, paragraph 5-2).

(i) If the evaluation supports applicability of the Gratuities clause, the military commander will send the matter directly to the cognizant HCA with:

(A) The name and address of the contractor, with a statement as to form of organization, including names and addresses of principals.

(B) Complete contract data, including number, date, estimated day of completion of performance, general description of supplies or services procured, dollar amount, status of performance and payment, urgency of requirements and availability of the supplies or services from other sources.

(C) A summary of the facts concerning the suspected violation, with names and addresses, dates and references to documentary evidence available.

(D) The status of any ongoing investigation with an estimated date upon which the report of investigation will be submitted.

(ii) If required, submit a complete report of investigation as soon as practicable (exempt report, AR 335-15, paragraph 5-2). Be careful to preserve the admissibility of documentary evidence and exhibits, bearing in mind that action adverse to a contractor under the Gratuities clause is subject to review by a competent court. Copies or descriptions shall be used in this report where necessary or desirable to preserve the chain of custody.

(iii) The cognizant contracting activity must send the matter to the appropriate Debarring Official (5109.403 and DFARS 209.403).

(iv) The contracting officer must withhold from payments otherwise due the contractor a sum up to 10 times the estimated amount of the gratuities alleged to have been offered or given by the contractor, its agents, or other representatives, in violation of the Gratuities clause.

(v) Pending final decision on the matter, the cognizant contracting activity must send to the Debarring Official information regarding any termination, set-off, or withholding action proposed or taken against the contractor.

5103.204 -- Treatment of Violations.

(a)

(i) The Debarring Official will be the hearing officer and responsible for notifying a contractor of any suspected violation of the Gratuities clause. The notification must

describe the suspected violation and provide a copy of the record that forms the basis for the notification by the Debarring Official. If there is a reason to withhold any portion of the record, the contractor must be informed of what is withheld and the reasons for such withholding. The contractor must have 30 working days from receipt of notice to submit written matters in opposition or request an in-person hearing on the matter.

(ii) The contractor must be informed that it may oppose the charges set forth in the notice letter. The contractor may oppose the charges individually or through counsel. The contractor may submit documentary evidence, present witnesses at its own expense, and question any person the agency presents on the matter.

(iii) If the contractor does not request an in-person hearing, the Debarring Official must make findings, conclusions, and recommendations on the basis of the written record. If a contractor desires to present matters in person or through counsel, any written material should be delivered at least five working days in advance of the hearing.

(iv) In-person hearings will be informal and non-adversarial in nature. The Debarring Official and/or other agency representatives may ask questions of the contractor or its representative making the presentation.

(v) The Government's representative and the contractor or its representative will have an opportunity to present evidence relevant to the facts at issue.

(vi) Witnesses may testify and shall be sworn. Witnesses shall be reminded of the official nature of the proceeding and that they are subject to criminal prosecution for any falsified testimony. Witnesses are subject to cross-examination.

(vii) Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern the conduct of the in-person hearing. Hearsay evidence may be presented and shall be given appropriate weight.

(viii) A verbatim transcript of the hearing must be made and will become part of the administrative record. The contractor will be provided a copy of the transcript. The contractor will have seven working days from receipt of the transcript to provide final comments to the Debarring Official.

(ix) The Debarring Official's findings, conclusions, and recommendations must be based on the preponderance of the evidence found in the administrative record. The Debarring Official must make all findings and conclusions relevant to whether a violation of the Gratuities Clause occurred, whether any contractor's right to proceed should be terminated, whether an assessment of damages is appropriate, and, if so, what the amount of such an assessment should be. The Debarring Official must submit, for final decision, the administrative record with findings, conclusions and recommendations as to the final disposition of the case to the deciding official, the ASA(AL&T) or designee. The decision of the ASA(AL&T) or designee must be based on the preponderance of the evidence found in the administrative record. The

decision must be promptly provided to the contracting officer for appropriate action authorized under the Gratuities clause.

(x) The Judge Advocate General (TJAG) must provide administrative support to the Debarring Official. The TJAG Counsel must act as the Government's representative in any proceeding pursuant to this subpart of the AFARS.

Subpart 5103.3 -- Reports of Suspected Antitrust Violations

5103.304 Interagency Coordinations Concerning Business Mergers and Acquisitions.

(a) The DoD position concerning the impact of a business merger or acquisition on national security (including the impact on the Department and on the defense industrial base) will be determined at the level of the Under Secretary of Defense (Acquisition & Technology) or higher. Only the Secretary of Defense, the Deputy Secretary of Defense, and the Under Secretary of Defense (Acquisition, Technology & Logistics), or, on behalf of the foregoing, the Assistant Secretary of Defense for Economic Security or the DoD General Counsel, are authorized to communicate the DoD position to the media or to the two federal agencies responsible for enforcement of the antitrust laws, i.e., the Department of Justice and the Federal Trade Commission (the "antitrust agencies").

(b) No member of the Department of the Army may communicate, either to the antitrust agencies or to the media, any official position concerning the impact that a particular merger or acquisition will have or may have on national security, unless delegated specific authority for such purpose.

(c) In connection with litigation, only the DoD General Counsel or his designee will communicate the DoD position concerning the impact that a particular merger or acquisition will or may have on national security.

(d) It is Army policy to cooperate with the antitrust agencies as they review a merger or acquisition involving an Army supplier. Department of the Army personnel may provide factual information (such as past and anticipated future sources and quantities of supply for particular products) to the antitrust agencies, provided that such communication is coordinated in advance with the Assistant Secretary of Defense for Economic Security and the DoD General Counsel.

(e) Army personnel are authorized to respond directly to requests for information received from the office of the Assistant Secretary of Defense for Economic Security or from the DoD General Counsel's office. The Office of the Army General Counsel (Army OGC), telephone (703) 697-5120, will provide liaison with DoD on mergers and acquisitions when requested.

(f) Army support for, or opposition to, a proposed merger or acquisition will be determined at HQ DA, after appropriate coordination and approval in the Office of the Secretary of Defense. Army personnel who have information or opinions relevant to

development of the Army position should forward their input, in coordination with local counsel, to the Assistant Secretary of the Army (Acquisition, Logistics and Technology) or to the Army OGC.

Subpart 5103.6 -- Contracts with Government Employees or Organizations Owned or Controlled by Them

5103.602 -- Exceptions.

Only HCAs may authorize exceptions to the policy in FAR 3.601.

Subpart 5103.8 -- Limitation on the Payment of Funds to Influence Federal Transactions

5103.806 -- Processing Suspected Violations.

See AR 27-40, paragraph 8-4.

AFARS -- Part 5104

Administrative Matters

Subpart 5104.1 -- Contract Execution

5104.103 -- Contract Clause.

If a contract or modification must be approved by any officer or official other than the contracting officer, use the clause in FAR 52.204-1, Approval of Contract.

Subpart 5104.2 -- Contract Distribution

5104.202 -- Agency Distribution Requirements.

Distribute a copy of contracts for utility services and communications to GSA/Public Buildings Service, Office of Procurement, Public Utilities Service Division (PPU), Room 7322, GSA Building, 18TH & F Streets NW, Washington DC 20405.

Subpart 5104.4 Safeguarding classified information within industry

5104.403 Responsibilities of contracting officers.

(b) Use the procedures in AR 380-5 when procedures apply to a classified acquisition. It is Army policy that the Security Manager, as the authorized representative, must sign the DD Form 254.

Subpart 5104.5 Electronic Commerce

All contracting offices will post all solicitations to the Army's Single Face to Industry (ASFI) web site (<http://acquisition.army.mil/>). The ASFI provides industry partners with a single Army entry point and a simplified method for conducting new business opportunities searches. The AFSI sends data to the Department of Defense (DoD) Business Opportunities website (<http://www.dodbusopps.com/>). Consequently, vendor search capabilities improve across the entire DoD. Army industry partners are encouraged to register in AFSI for submission of proposals via the secure bid response system. In addition, the Federal Business Opportunities (FedBizOpps) web site (<http://www.fedbizopps.gov/>) is designated as the electronic government wide entry point for information on government contracts over \$25,000. All qualifying notices and access to solicitations shall be posted to the FedBizOpps web site.

Subpart 5104.6 -- Contract Reporting

5104.601

Contract reporting on the DD Form 350 and DD Form 1057 will be in accordance with procedures and policies developed by the Information Management and Assessment Directorate (SAAL-PA).

5104.670 -- Defense Contract Action Data System (DCADS).

5104.670-3 -- Contracting Office Responsibilities.

(a)

(2) Within one working day after the date dollars were actually obligated or deobligated, the contracting activity must electronically record, edit, and correct all Army contracting actions reported on DD Forms 350 and 1057. These transactions must be edited in accordance with the instructions developed by DoD/WHIS/DIOR and the Information, Management, and Assessment Directorate (SAAL-PA). See 5104.670-7.

(ii) The Army data collection point must give written notice if the normal reporting due date for September is extended for any year.

(3) See 5153.204-70(a)(1)(ii) and (iii).

(5) A copy of the submitted DD Form 350 must be included in the contract file; however, contract file copies of DD350 transactions submitted electronically do not require a signature.

(b)

(1) Prepare a DD Form 1057 on an annual basis, not monthly, for Military Advisory Assistance Groups (MAAGS), Missions and Military Groups.

(2) See 5104.670-7.

(3) Once a DD Form 1057 is successfully submitted and accepted by the data collection point, no changes may be made to the report. All changes must be included in the following month's report. If the data collection point returns the DD Form 1057 for correction because of editing errors, a corrected DD Form 1057 may be submitted.

5104.670-6 -- Types of DD Form 350 Reports.

(b)(1)

(v) Consolidate by reporting the transactions for each Principal Place of Performance (Block B6A) on a separate DD Form 350 for each of the following Service Codes (Block B12A): S111, S112, S114 and S119. Details of special coding for these transactions are given in Part 53 under the instructions for those blocks requiring special coding.

5104-670-7—Report Formats

Transmit all contracting actions for a calendar month to arrive at the SAAL-PP by the tenth day of the following month. Unless an exception is granted, all data must be electronically submitted. Written requests for annual exceptions to electronic submission of data must be submitted so as to be processed and approved by the SAAL-PA prior to 1 October of each fiscal year.

Subpart 5104.70 -- Uniform Procurement Instrument Identification Numbers

5104.7000—Scope

(b) Army contracting activities shall follow the DFARS procedures for numbering all solicitations, contracts and related instruments.

5104.7003 -- Basic PII number.

(a) *Elements of a number.*

(3) *Position 9.*

(xxvi) Army Materiel Command contracts with Government Owned Contractor Operated (GOCO) plants.

AFARS -- Part 5105

Publicizing Contract Actions

Subpart 5105.3 -- Synopses of Contract Awards

5105.303 -- Announcement of Contract Awards.

(a) *Public announcement.*

(i) Report all contracts which are of significance to local community, congressional, or Army interest.

(ii)

(A)

(i) The contracting office must submit the information (see DFARS 205.303) by e-mail or facsimile to the Information Management and Assessment Office at DSN 761-9304 or (703) 681-9304. Contract award information shall be submitted not less than three working days prior to award. The information must be sent in the prescribed format to eliminate the need for rework.

(ii) By 1200 hours EST or EDST on the day before the day of the proposed award, the Information Management & Assessment Office will verify that the award will be made as scheduled. If the contracting office is not contacted, the PCO must confirm that the award will be made as scheduled by calling the Information Management & Assessment Office at DSN 761-9782 or (703) 681-9782.

(iii) National or local releases to the wire services or to contractors, other than the awardee, must not be made prior to the public announcement on the date of award, 1700 hours EST or EDST, even on a "hold for release time" basis.

(iv) Time of release of replies to Congressional inquiries pertaining to award of proposed contracts must be coordinated with the OCLL telephonically at DSN 227-8133/(703) 697-8133 or by fax at DSN 227-6988/(703) 697-6988. This requirement applies to all replies, irrespective of whether or not the inquiry was received directly or indirectly by the contracting activity. Replies must not be released until public announcement of the contract award.

(vii) If the award is a conditional contract resulting from a commercial activities cost comparison, as required at FAR 7.306(b)(1), provide a statement as follows:

“This conditional contract has been awarded to (Name of Contractor) . The results of the cost comparison will be provided to all interested parties, including the affected employees, their unions, and the potential contractor. A final decision will not be made until any objections to the cost comparison have been evaluated. The report to Congress required by Title 10, Chapter 146, Sections 2461-68, will be made before the contractor is authorized to proceed under this conditionally awarded contract, if the final decision is to convert to contract performance. If the final decision is to retain the activities in house, the contract will be canceled.”

(D)

(iii) The Office of the Chief of Legislative Liaison informs members of Congress in whose state or district the contractor is located and the work is to be performed. See DFARS 236.601 and 249.7001, and AFARS implementation of those citations for Congressional notification requirements for A-E contracts and contract terminations.

Subpart 5105.4 -- Release of Information

5105.403 Requests from Members of Congress.

(a) *Individual requests.* Information that is not being concurrently released for other purposes, but which is being provided specifically in response to a Congressional inquiry, must not be disclosed prior to actual delivery of the information to the Member of Congress or the Member’s representative. When the FAR requires referral of the reply to the agency head, the contracting officer must send the proposed reply, with full documentation, and send an interim reply to the Member of Congress, indicating the action being taken. Neither copies of responses to Congressional inquiries nor the substance of replies can be furnished to news media or the public without the prior approval of the Chief of Legislative Liaison, Department of the Army.

5105.404 Release of long-range acquisition estimates

5105.404-1 Release procedures.

(a) *Application.* HCAs are authorized to release estimates. This authority may be redelegated no lower than the chief of the contracting office.

Subpart 5105.5 -- Paid Advertisements

5105.502 -- Authority.

(a) *Newspapers.* HCAs may redelegate their authority to approve the publication of paid advertisements in newspapers to their Deputies, PARCs, and installation/activity commanders with authority to redelegate further. The ASA (ALT) has delegated, without authority to redelegate further, authority to approve the publications of advertisements in newspapers to the following:

- (i) Commander, U.S. Total Army Personnel Command.
- (ii) Deputy Chief of Staff for Personnel, U.S. Army Materiel Command.
- (iii) The Auditor General, U.S. Army Audit Agency.
- (iv) Director of Human Resources, Office of the Chief of Engineers.
- (v) Commander, U.S. Army Recruiting Command.
- (vi) Chief, Army Reserve.
- (vii) Commander, U.S. Military Entrance Processing Command.

AFARS -- Part 5106

Competition Requirements

Subpart 5106.3 -- Other Than Full and Open Competition

5106.302 -- Circumstances Permitting Other Than Full and Open Competition.

5106.302-1 -- Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.

(b) *Application.* When a procurement will not be synopsized because of national security considerations (FAR 5.202(a)(1)), use the authority of 10 U.S.C.2304(c)(6), not (c)(1).

5106.302-3 -- Industrial Mobilization; or Engineering, Development, or Research Capability

(c) When using the authority of FAR 6.302-3(a)(2)(ii), the contracting officer must ensure that the technical and requirements personnel's certifications required by FAR 6.303-1(b) and 6.303-2(b) contain a statement that the proposed effort has been reviewed to assure that it falls within the charter or special capabilities of the proposed institution and establishes or maintains (as appropriate) an essential engineering, research or development capability to be provided by an educational or other non-profit institution or a federally funded research and development center (FFRDC). In addition, when proposing to contract directly with an FFRDC not sponsored by the contracting activity, the contracting officer must ensure that the requirements personnel have included with the procurement request a written confirmation from the sponsoring agency that the proposed effort falls within the purpose, mission and general scope of effort or special competency of the FFRDC. (See FAR 17.504(e).)

5106.303 -- Justifications.

5106.303-1 -- Requirements.

(b) HCAs must establish appropriate management levels for review and approval of recommendations by technical and requirements personnel.

(c) A justification made on a class basis—

(i) May cover contracts to be awarded in successive fiscal years, provided that the requirements and quantities, as included in the Future Years Defense Plan, and their costs have been specifically identified.

(ii) Must address every contract included in the scope of the class justification in each paragraph in detail (e.g., specific quantity and dollar amounts for each contract; detailed documentation of the circumstances supporting the use of other than full and open competitive procedures for each contracting action)

(iii) Must include only those supply or service components that are, and will clearly remain, sole source for the period covered by the justification.

(d) If a contract exceeding \$50 million is awarded prior to approval of a justification using the authority cited in FAR 6.302-2, the justification must be submitted for approval to the address in 1.290(b)(2) no later than 30 working days after contract award.

(e) Prior to exercising options included in a previously approved J&A, these options must be individually rejustified and approved in writing at the same level as the original J&A. This requirement is not waivable, either on an individual or class basis. The rejustification shall contain the following: (1) a copy of the original J&A, and (2) a written determination by the Contracting Officer that comprehensive, current market research has been utilized to justify the exercise of the option, and a summary and analysis of what the market research found. In addition, the rejustification shall contain all of the requirements of FAR 17.2, which are applicable to the exercise of a sole source option. The rejustification shall be submitted for approval through contracting channels to the same level that approved the original J&A.

In accordance with 10 U.S.C.2304 (c)(2), when the need to exercise a sole source option for supplies and services is of such an unusual and compelling urgency that the Government would be seriously injured unless the option is exercised, the rejustification must be submitted for approval no later than 15 days after the option is exercised. This provision must only be used in those situations (as defined in 10 U.S.C. 2304 (c)(2)) where an unusual and compelling urgency exists, and where the delay in exercising the option will result in serious injury to the Government. In these cases, the rejustification (in addition to those items enumerated in this paragraph (e)) will also contain a discussion addressing the unusual and compelling urgency, and the need to exercise the option before approval can be obtained. The requirement set forth in this paragraph is not waivable, either on an individual or class basis.

5106.303-1-90 -- Requirements for Amended Justifications.

(a) The contracting officer must amend the justification and obtain the required approvals when any of the following occur prior to award of the contract:

(1) An increase in the dollar value of the prospective contract beyond the authority of the previous approving official;

- (2) A change in the competitive strategy that further reduces competition; or
- (3) A change in requirements that affects the basis for the justification.
- (d) Prepare all amended justifications as required in 5106.303-2-90(b)(3).

5106.303-2 -- Content.

Attach a copy of the approved acquisition plan (DFARS 207.103(c)) to the justification.

5106.303-2-90 -- Format of the Justification Review and Justification and Approval Documents.

(a) *General.* The formats for justification review document (5153.9004) and justification and approval must be used for contracting actions exceeding \$50 million.

(b) *Instructions.*

(1) *Justification review document.* This is the cover page of the justification and approval document. Begin page numbering on this document. Enter the control number in the upper right corner of each page.

(2) *Justification and approval document.*

(i) Continue page numbering on the first page of the justification, and number each page of the justification and approval document.

(ii) Enter the control number in the upper right corner of each page.

(iii) If a paragraph of the format does not apply to the contracting action, indicate “Not applicable,” and explain why.

(iv) Give special attention to providing a comprehensive statement in paragraph 7, “Actions to Increase Competition.”

(3) *Amended justifications.*

(i) When an amended justification is required, prepare a document entitled “Amendment to Justification for Other Than Full and Open Competition,” using the same paragraph designations used in the original justification. Attach a copy of the original justification review, and justification and approval documents. In addition, do the following:

(A) Number amendments sequentially.

(B) Include paragraphs 1, 2 and 3 in full, revised if required. Place a vertical line in the right margin to mark lines containing changes.

(C) Include new certifications by the contracting officer (paragraphs 11 and 12). Include new technical and requirements certifications (paragraphs 13 and 14) only when changes in those areas of responsibility prompted the amendment.

(D) Use paragraph 10 to explain the reason for the amendment and to give any additional information that would help the reader understand the changes made.

(E) Address all remaining paragraph numbers of the justification format either by stating “No change” following the paragraph number or by inserting the entire revised paragraph. If practical, use a vertical line in the right margin to mark revised lines. For major revisions, including the addition of paragraphs that previously did not apply, instead of using a vertical line, use paragraph 10 to identify the paragraph number and summarize the changes; do this following the entry required by (D).

(ii) Determine the approval level for an amended justification by using the new dollar value of the amended justification.

5106.304 -- Approval of the Justification.

(a) If any change (e.g., dollar value, strategy, scope) exceeds the basis for the original justification approval authority, new justification approval must be obtained from the appropriate approval authority prior to award.

(c) Class justifications must be approved in the same manner as individual justifications with the same approval thresholds..

Subpart 5106.5 -- Competition Advocates

5106.501 -- Requirement.

The ASA(ALT) appoints the Army Competition Advocate General. The Deputy Assistant Secretary of the Army for Procurement (SAAL-ZP) is the Army Competition Advocate General (ACAG). The ACAG has delegated to HCAs the authority to appoint the Special Competition Advocates (SCAs) at Army procuring activities and their alternates. This authority shall not be redelegated. Designation of competition advocates at contracting offices subordinate to contracting activities must depend on the nature of the contracting mission of the office, the volume of significant contracting actions, the complexity of acquisition planning and other responsibilities of such local advocates. Competition advocates may be appointed on a part-time basis.

5106.502 -- Duties and Responsibilities.

(b)

(2) Special competition advocates must report to the Army Competition Advocate General no later than 30 December of each year with the following information (use Reports Control Symbol DD-ACQ(AN) 1644:

(A) The level of competition achieved against the assigned goal and reasons for not attaining the goal.

(B) Significant actions taken to increase competition or overcome barriers to competition, number of new sources identified as the result of market surveys, notable savings or performance/quality enhancements resulting from competition, or employees recognized for initiatives to enhance competition.

(C) Mitigating actions affecting goal achievement

(D) A plan for competition in the coming fiscal year.

(E) Any other activities and accomplishments.

(ii) By October 15th of each year special competition advocates must provide to the Army Competition Advocate General, through the HCA, recommended competition goal for the coming fiscal year.

(iii) Special competition advocates should provide supplementary information on items considered significant to the Competition Advocate General at any time during the fiscal year. Use Reports Control Symbol SAOSA-208.

AFARS -- Part 5107

Acquisition Planning

Subpart 5107.1 -- Acquisition Plans

5107.103 -- Agency-Head Responsibilities.

(e) Prepare written acquisition plans, for up to a five-year period, in accordance with dollar thresholds contained in the DFARS and acquisition plan approval levels at (h)(i) thru (iii). Update acquisition plans when required for milestone approval or when there is a change in the acquisition strategy.

(h)

(i) Acquisition plans for Army Acquisition Executive designated special interest programs must be approved by HQDA. Acquisition plans for special interest programs must be processed the same as other acquisition plans.

(ii) For programs assigned to Program Executive Officers (PEOs) and Program Managers reporting directly to HQDA, acquisition plans must be approved by cognizant PEOs and PMs when the dollar value of contracts covered is estimated to exceed \$15 million for any fiscal year/\$30 million for all years including options. This approval authority may not be redelegated.

(iii) For all non-PEO acquisitions, acquisition plans must be approved by the PARC when the dollar value of contracts covered by the plan is estimated to exceed \$15 million for any fiscal year or \$30 million for all years including options. This approval authority may not be redelegated.

(iv) Programs below the thresholds in (h)(ii) and (iii) shall be approved in accordance with contracting activity procedures.

(v) Requests for approval of acquisition plans over the thresholds in (h)(ii) and (iii) must include the concurrence of the --

(A) Contracting officer;

(B) Local competition advocate;

(C) Local small and disadvantaged business utilization (SADBU) office or on-site SADBU official;

(D) Legal office; and

(E) Appropriate matrix elements from the supporting contracting activity.

(k) Waivers must be approved by the individual authorized to approve the plan.

5107.103-90 -- Distribution of Written Acquisition Plans.

Acquisition plans which have not been approved cannot be released outside the PEO organization or supporting contracting activity without the authorization of the DASA(P).

5107.104 -- General Procedures.

(a) Each HCA must establish an acquisition planning (AP) system which includes all significant or sensitive contracting requirements anticipated for the upcoming fiscal year.

(b) The AP system must include monetary thresholds, milestones, and other parameters for all proposed contract actions that will be included in the AP system, including those proposed requirements for which formal acquisition plans are not required under DFARS 207.103(c).

(c) Acquisition lead-times should allow sufficient time for development of acquisition strategy, preparation of solicitations (including any necessary coordination with requiring and technical elements), receipt and evaluation of bids or proposals, audits, negotiation, boards or business clearance reviews, source selection and preparation of contractual documents in an orderly and timely manner.

(d) HCAs should establish due dates for submission of procurement requests requiring action by the end of the fiscal year to the contracting office. Exceptions to established due dates must be minimized and require authorization at a level not lower than the chief of the contracting office.

(e) In acquisitions where sole source approvals will be obtained, acquisition planning must provide appropriate opportunities for the following:

(1) involving Defense Contract Management Agency and Defense Contract Audit Agency early in the acquisition process,

(2) obtaining appropriate contractor input for use in the development of the acquisition strategy,

(3) establishing a Government/Contractor team (including executors and reviewers), committed on a real-time basis to streamline the acquisition process and maintain open communications;

(4) teaming of the Government and Contractor in development of the proposal and model contract, leading to agreement on contractor effort and costs associated with the task(s); and

(5) teaming of the Government and contractor during post-award contract performance to improve communications and develop efficient contract administration.

Subpart 5107.2 -- Planning for the Purchase of Supplies in Economic Quantities

5107.204 -- Responsibilities of Contracting Officers.

(a) Send offerors' responses to the solicitation provision in FAR 52.207-4 to the requiring activity.

Subpart 5107.3—Contractor Versus Government Performance

5107.302--General

To achieve fair and even-handed competition between in-house and industry, Principal Assistants Responsible for Contracting (PARCs) will ensure that industry is provided with pertinent, accurate, and available data necessary to engender as full and complete an understanding as possible of the operation(s) covered by the A-76 competition. Historical data provided must be relevant, well organized, and cover at least nine months (see DA PAM 5-20). Such data should include work years, by skill mix, currently being expended to perform the work.

To maximize use of Army resources, every effort must be made to utilize A-76 contracting best practices and good ideas that have worked for others and avoid repetition of unsuccessful strategies and procedures. All A-76 "lessons learned" (beginning with the Fourth Quarter of FY 2001) must be submitted within ten days after the end of each quarter to the ODASA(P), ATTN: SAAL-PS, e-mail: rachel.lilley@saalt.army.mil. These "lessons learned" will be posted to the Army webpage: <http://acqnet.saalt.army.mil>.

5107.304(c)—Solicitation

All A-76 solicitations will be performance-based.

Every effort must be made to ensure that a truly complete and meaningful site visit is provided for prospective offerors, to include availability of personnel who are capable of answering questions as the tour progresses. Ensure that all questions posed during the solicitation period by both industry and the in-house workforce are treated with due respect and fully answered. A reasonable due diligence effort to each offeror, who requests it, must be provided. That includes, but is not limited to, allowing them to watch the current operation. Any such opportunities that are made available to one must be made available to all.

PARCs have the final authority over release of A-76 solicitations to industry and the responsibility for the quality of the contracting process. PARCs must ensure availability of clear guidance and develop a review process that results in uniform, quality solicitations and contracts. Minimizing variations in approach for similar services facilitates Government solicitation preparation time and increases competition by making it easier for industry to respond.

5107.306—Evaluation

Generally, A-76 solicitations will be evaluated using the best value method of source selection where technical, management and past performance criteria will be heavily weighted. This will allow for alternative solutions that may be different from current processes but satisfy the outputs required. The lowest-price, technically acceptable method of source selection will not be utilized unless the PARC specifically justifies and approves such use in writing on a case-by-case basis. This authority may not be redelegated by the PARC. Copies of all such approvals will be furnished to the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)).

Subpart 5107.5 -- Inherently Governmental Functions

5107.503 -- Policy.

(e) Requiring officials must provide the contracting officer a written determination that none of the functions required are inherently governmental. Disagreements regarding the determination must be resolved by the Contracting Officer prior to issuance of the solicitation.

AFARS -- Part 5108

Required Sources of Supplies and Services

Subpart 5108.70 -- Coordinated Acquisition

5108.7002 -- Assignment Authority.

(a)

(1) The Commanding General, U.S. Army Materiel Command, shall assign procurement responsibility for commodities assigned to the Army under DFARS Appendix B.

AFARS -- Part 5109

Contractor Qualifications

Subpart 5109.4 -- Debarment, Suspension, and Ineligibility

5109.402 -- Policy.

(d) The Chief, Procurement Fraud Division, US Army Legal Services Agency processes and recommends debarment or suspension action to the debarring or suspension official

5109.403 -- Definitions.

(1) The debarring officials for overseas installations are --

- (A) Deputy Judge Advocate, U.S. Army Europe and Seventh Army;
- (B) Staff Judge Advocate, U.S. Army South; and
- (C) Staff Judge Advocate, U.S. Eighth Army.

5109.404 -- List of parties Excluded from Federal Procurement and Nonprocurement Programs.

(c)

(5) HCAs must establish required procedures within their contracting activities.

5109.405 -- Effect of Listing.

(a) If a contracting officer believes that a compelling reason exists to do business with a contractor who has been debarred, suspended, or proposed for debarment, he/she must send a request for a determination to the HCA. If the HCA concurs, the request and concurrence will be sent through the Chief, Procurement Fraud Division (see 5101.290(b)(9)) to the debarring official for a determination. If the debarring official determines that there is compelling reason for such action, the debarring official shall provide written notice to the GSA.

5109.406 Debarment

5109.406-3 -- Procedures.

When the contracting officer becomes aware of a situation that requires investigation under FAR Subpart 9.4, he/she must contact the local Procurement Fraud Advisor (PFA) who will send a Procurement Flash Report in accordance with paragraph 8-5 of AR 27-40 when there is a reasonable suspicion of procurement fraud or irregularity or the procuring agency refers the matter for investigation. The contracting officer must provide information to the PFA for the Procurement Flash Report as required.

(a) *Investigation and referral.*

(i) Contracting officer reports must be sent through the HCA or designee to the PFA for review. Prompt reporting is essential in all cases which could lead to suspension or debarment of a contractor or to judicial or administrative action against military personnel or civilian employees of the Army.

(ii) The report must include contractor credit and financial information, such as Dunn and Bradstreet reports. When the report recommends suspension or debarment because of contractor fraud or criminal conduct involving a current contract, withhold all funds which become due the contractor on that contract, unless the HCA or the debarring official directs otherwise. Follow the procedures in DFARS 232.173 when a contractor's request for advance, partial, or progress payments is based on fraud.

(iii) Distribute reports to the debarring official through the Procurement Fraud Division (PFD) as follows: Forward the original and one copy through contracting channels to the PFD, and send the second copy directly to the PFD.

5109.407 -- Suspension.

5109.407-3 -- Procedures.

(a) Investigation and referral.

Prepare and process reports in accordance with 5109.406-3.

5109.5 – Organizational and consultant conflicts.

Only the HCA can make determinations required by FAR 9.503.

AFARS – Part 5110

Market Research

5110.002(b)

Except for “sources sought” synopses, market research is the responsibility of program managers or the requiring activity. However, all members of the acquisition team must be cognizant of available emerging technology. Requirement statements must reflect any available commercial solutions. Requirements personnel and contracting officers must work together as a team to gather market data needed to make decisions. Market research utilized to justify sole source must be complete and not more than 12 months old. A statement that the solicitation will be synopsized and that all proposals received will be evaluated is not a substitute for performing adequate market research and in itself does not support and justify sole source.

AFARS -- Part 5111

Describing Agency Needs

Subpart 5111.2 -- Using and Maintaining Requirements Documents

5111.271 -- Elimination of Use of Class I Ozone-Depleting Substances.

(a) *Contracts.*

(i) The organization with primary responsibility for determining the principal specifications and standards cited in the solicitation or contract is responsible for obtaining authorization to include the specification or standard in the contract.

(ii) The approving official must be from the technical or program organization with primary responsibility for determining the equipment or systems specifications and standards.

(b) *Modifications.*

(1) For contracts administered by the Army, the CO must obtain an evaluation for the elimination of ozone-depleting substances from the organization in (a)(i).

(3) The written determination must be based on a certification by a technical representative of the Army Acquisition Pollution Prevention Support Office, Attn: SAAL-ZCS-E, 5001 Eisenhower Avenue, Alexandria VA 22333-0001, in coordination with PEO or PM officials. Elevate any dispute concerning what constitutes a suitable substitute through the PEO or PM to the Army Acquisition Executive for a final decision.

Subpart 5111.6 -- Priorities and Allocations

5111.602 -- General.

5111.602-90 -- Responsibilities

(a) The DCS(RDA), HQ AMC is responsible for administering the Priorities and Allocations System within the Army.

5111.603 -- Procedures.

- (e) See AR 715-5. Questions about areas not covered in AR 715-5 should be directed to the Office of the DCS(RDA), Headquarters, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.

AFARS PART 5112—

Acquisition of Commercial Items

Subpart 5112.000—Scope of Part

Expanding the use of commercial items in Department of Defense (DoD) systems offers the DoD opportunities for reduced cycle time, faster insertion of new technology, lower life cycle costs, greater reliability and availability, and support from a more robust industrial base. Acquisition professionals are encouraged to expand their use of commercial items whenever practical, in accordance with FAR and DFARS Part 12, as well as DoD Directive 5000.1. The Source Selection Authority for competitive acquisition of commercial items will be the Contracting Officer. Exceptions to this designation will be on a case-by-case basis documented and approved in writing by the PARC , on a nondelegable basis, with a copy furnished to the DASA(P).

AFARS -- Part 13
Simplified Acquisition Procedures
April 3, 2001

Subpart 5113.2 -- Actions at or Below the Micro-Purchase Threshold

5113.270 -- General.

(a) Delegation of micro-purchase authority.

(1) Principal Assistants Responsible for Contracting at the major commands are responsible for the overall implementation and administration of the purchase card program at their subordinate commands and installations.

(2) Installation Commanders or activity directors shall appoint the purchase card approving official as the certifying officer for purposes of certifying payments to the paying office (disbursing officer) for purchase card issuer invoice. Certifying officers are pecuniary liable for erroneous payments resulting from the performance of their duties in accordance with Title 31, United States Code, section 3328.

(3) Chiefs of Contracting Offices shall:

(a) Develop internal operating procedures and incorporate appropriate controls in the Command or Installation Internal Control Program. Procedures and controls shall be written to place minimum burdens on cardholders

(b) Designate an agency program coordinator

(c) Issue delegations of authority to cardholders;

(d) Approve training course content and instructor qualifications

(e) Ensure prescribed training of cardholders and approving officials

(f) Ensure appropriate functional participation in the development and administration of the program (e.g., Finance and Accounting, Director of Logistics, Director of Public Works, Legal, etc.)

(g) Perform oversight reviews on approving officials to ensure cardholder adherence to policy and procedures. Reviews will be conducted not less frequently than annually. Accounts with significant dollar thresholds should be reviewed on a more frequent basis.

(h) Shall ensure Convenience checks are safeguarded to ensure good stewardship, discourage, and detect fraudulent actions with the checking accounts. Checking accounts must be audited on a quarterly basis. Audits will be conducted by a duly appointed, disinterested third party under the guidance of the local internal Review (IR activity). The quarterly audit requirement must be added to the management control checklist of Government Purchase card.

(4) Agency Program Coordinators (APC) shall:

(a) Serve as the purchase card focal point at each activity

(b) Establish, and maintain current, cardholder and approving official accounts;

(c) Obtain from resource managers, spending limits and finance and accounting data to be used in establishing cardholder and approving official accounts; and

(d) Ensure accounts are not established or billing officials certify invoices until required letters of delegations and appointment letters have been issued to cardholders and approving officials /certifying officials

(5) Approving officials shall:

(a) Ensure that the transactions meet the legal requirements for authorized purchase card purchases

(b) Ensure that adequate documentation is available for individual transactions

(c) Ensure the facts presented in documents for payment are complete and accurate

(d) Take appropriate action to prevent two or more payments for the same transaction

(e) Ensure proper implementation of dispute procedures when transactions are questioned

(f) Provide copy of certifying officer appointment letter with signature card to the supporting payment office

(g) Certify and forward the official invoice to the paying office within 15 days of receipt. Electronic invoice is considered received on the first day following the end of the billing cycle.

(6) Cardholders shall:

(i) Reconcile purchases actually made within 5 working days of receipt of their monthly statement of account. Electronic statement of account is considered received on the first day following the end of the billing cycle.

(ii) Maintain a log of purchases. The log shall be the cardholder log within Customer Automated Reporting Environment (C.A.R.E.) when the cardholder has been given access to C.A.R.E.

(c) Training Requirements:

(i) Cardholders and certifying officials shall receive training and orientation covering the use of the card prior to being delegated authority under the program. Training may be locally developed, but specifically designed to cover federal, defense, and departmental regulations, policies and procedures pertaining to micro-purchases and simplified acquisition procedures, as applicable. Orientation shall address GSA, Card-Issuing Bank and installation-unique policies.

(ii) Cardholders shall receive procurement ethics training. Cardholders and Certifying Officials shall be advised of pecuniary liability under the program for certifying and accountable officials

(iii) The Chief of the Contracting Office may require additional training depending on the thresholds and circumstances established for the card's use.

5113.202. -- Purchase Guidelines.

(a) Micro-purchase authority should be delegated to the lowest possible level. Purchase cards shall be issued only to individuals who have received the orientation/training on the purchase card program as required in these procedures.

(b) Contracting Officers **shall not issue** cards to contractors. If contractors working on cost type contracts request cards, their request shall be forwarded to the contracting officer for the cost-reimbursable contract. If that office determines that they are eligible, the contractor will then file a Request for Eligibility Determination with the GSA SmartPay Contracting Officer.

(c) Cardholders may be authorized to utilize the Government Purchase Card as a payment instrument for orders exceeding \$2,500 made against Federal Supply Schedule contracts, calls written against a Blanket Purchase Agreement (BPA) or orders placed against

Indefinite Delivery/Indefinite Quantity (IDIQ) contracts that contain a provision authorizing payment by purchase card.

(d) The purchase card may also provide a streamlined way of paying for contracts other than those above. Prior to using the card this way, the contracting office shall determine that use of the card for payment is in the best interest of the Government. The determination shall address any increase in price and/or administrative costs to use the card versus the costs of processing the payment without the card.

(e) The purchase card may also be used to pay for government-owned materiel or government-performed services received from other government sources (i.e., DAPS, GSA, DLA).

5113.270 Use of the Government-wide commercial purchase card.

Use of the purchase card must meet the following conditions in addition to conditions imposed by the General Services Administration Federal Supply Schedule:

- (a) Each transaction should involve a single delivery and payment. Receipt of the item should be within the billing cycle or by the time the monthly report is received to simplify monthly reconciliation.
- (b) Cardholders shall not break down (split) requirements aggregating more than the micro-purchase threshold into several purchases merely to avoid any requirement that applies to purchases exceeding the micro-purchase threshold.
- (c) Cardholders shall advise Merchants/Vendors at the time the transaction(s) is/are made that items purchased with the card are "For Official United States Government Use." Most states will exempt purchases made by the Government from state and local taxes.
- (d) Cardholders shall initially attempt to settle disputes with the merchant. If the merchant refuses to work with the cardholder, or if 45 days has passed without resolution since receipt of the statement containing the questionable transaction, the cardholders shall formally dispute the transaction with the card-issuing bank.
- (e) When using the purchase card to pay for services/supplies received from other government sources (i.e., DAPS, GSA stores or depots, DLA), procurement thresholds do not apply. Payment with the card is mandatory for services obtained from the Defense Automated Printing Service (DAPS).
- (f) Army organizations are authorized to use the GPC up to micro-purchase thresholds at DOD NAFIs, including AAFES facilities, provided the resale activities are within scope of the particular NAFI's charter. Purchases up to \$50,000, maybe made from exchanges only (vice NAFI's) by overseas organizations and the purchase card can be used as a method of payment.
- (g) The purchase card shall be used as a method of payment for all commercial training \$25,000 and below for the following:

(i) DD Form 1556, Request, Authorization, Agreement, certification of Training, and Reimbursement in accordance with USC 41 for civilians.

(ii) DD Form 2171, Request for Tuition Assistance, provides financial assistance for voluntary off-duty education Programs in support of soldiers professional and personal self development. Supporting the GPC that utilizes payment for all education (payment vouchers) valued at or below \$25,000. The DA Form 2171 is the obligation document for education programs and services authorized under Title 10, US Code 2007 and AR 621-5 Army continuing Education system. Advance payments are authorized under TA Program IAW AR 621-5. All course enrollments must be approved prior to start of class.

Dollar limits.

- (i) for stand alone purchases, the single purchase limit is the micro-purchase threshold
- (ii) for payment against existing contracts, the limit is as identified in the contract
- (iii) the threshold for all convenience checks is \$2,500.

Subpart 5113.302 -- Purchase Orders

5113.302-3 -- Obtaining Contractor Acceptance and Modifying Purchase Orders.

It is not necessary to modify a purchase order to document a shortage in the final shipment, provided the shortage is negligible.

Subpart 5113.303 -- Blanket Purchase Agreements

5113.303 -- Establishment of Blanket Purchase Agreements.

5113.303-1 -- General.

(j)

(1) It is preferable to have multiple BPA's for similar items and to establish prices using reverse auctions between BPA holders. If quantities are too small and not conducive to using a reverse auction, then when practicable, contracting officers should establish pre-priced BPAs by negotiating firm unit prices for specific periods of time or by incorporating supplier's price lists or catalogs in BPAs.

(4) Blanket purchase agreements should not be established for supplies or services for which unpriced purchase orders should be used (FAR 13.502).

5113.303-2 -- Use of Blanket Purchase Agreements.

(a) The contracting officer must --

- (1) Ensure that those individuals authorized to place calls under BPAs have received training and orientation in accordance with (b);
- (2) Provide a copy of the BPA to individuals authorized to place BPA calls;
- (3) Ensure that individuals have ready access to price lists or catalogs incorporated in BPAs [The use of reverse auctions to determine pricing between BPA's is the preferred method.];
- (4) Ensure that suppliers are provided the names of individuals authorized to place calls; and
- (5) Inform individuals authorized to place calls that the authority may not be redelegated to others.

(b) Training for use of BPAs is the same as that required for the use of purchase cards. Orientation must focus on the BPA process, except that if the same individual will also be a purchase cardholder, BPA orientation must be in addition to the Purchase Card Program orientation. The chief of the contracting office is responsible for approving training course content and instructor qualifications when training is provided by someone outside the contracting office.

5113.303-6 -- Review Procedures.

(b) In addition to the review procedures in FAR 13.303, contracting officers who authorize individuals to place calls under BPAs shall --

- (i) Ensure that individuals equitably distribute calls among suppliers with BPAs;
- (ii) Ensure that individuals do not split requirements to evade monetary limitations;
- (iii) Require that individuals refer all cases where prices are not considered reasonable to the contracting officer for determination; and
- (iv) Maintain continuing surveillance over individuals to ensure compliance with acquisition regulations and that authorizations at 13.204 continue to be essential.

5113.306 -- Standard Form 44, Purchase Order-Invoice-Voucher.

(e)

- (i) The contracting officer signature constitutes certification of fund availability under the appropriation cited on the order. The contracting officer is responsible for

ensuring that funds are available and for entering the proper accounting classification on the order.

(ii) When the bulk funding concept defined at FAR 13.101 is used, the contracting officer must inform the finance and accounting officer at the close of each accounting month of the amount of all purchases made from the bulk funding accounting by use of the Standard Form 44.

(iii) If the supplier agrees, the contracting officer may hold completed Standard Forms 44 until the end of a month and prepare Standard Form 1034 as the payment voucher with the Standard Forms 44 attached as sub-vouchers. In such cases, the contracting officer signature on Standard Form 1034 will be sufficient in place of a signature on each Standard Form 44 attached. If the supplier does not agree to use this procedure, or if a time payment discount offered cannot be taken because of this procedure, the individual Standard Form 44 must be processed without delay to take the time payment discount.

AFARS -- Part 5114

Sealed Bidding

Subpart 5114.2 -- Solicitation of Bids

5114.205 -- Solicitation Mailing Lists.

5114.205-1 -- Establishment of Lists.

(b) Notify prospective bidders in accordance with local procedures.

5114.213 -- Annual Submission of Representations and Certifications.

(a) Annual representations and certifications are authorized. HCAs must develop implementing procedures.

Subpart 5114.4 -- Opening of Bids and Award of Contract

5114.407 -- Mistakes in Bids.

5114.407-3 -- Other Mistakes Disclosed Before Award.

(c) Chiefs of contracting offices having legal counsel available may make determinations described at FAR 14.407-3(c). This authority may not be redelegated.

(e) Authority to make the determinations at FAR 14.407-3(a), (b), and (d) is delegated only the following:

(1) Each PARC, who shall exercise the authority in coordination with the activity's Chief Legal Officer (i.e., Command or Chief Counsel or Staff Judge Advocate).

(2) Each Division Commander within the USACE, who must exercise the authority in coordination with the Division Counsel.

(3) The DASA(P).

(g)

(3) Include the data in (i) through (v) with that required by FAR 14.407-3(g)(3). Original documents sent will be returned with the determination.

- (i) Original of the alleged mistaken bid.
- (ii) Originals of all correspondence from the bidder regarding the alleged mistake.
- (iii) Originals of the worksheets and other evidence of the mistake furnished by the bidder.
- (iv) A statement by legal counsel concerning the merits of the allegation and the relief sought by the bidder.
- (v) The contracting officer's telephone number.

(i) When a doubtful case will be sent to the GAO Comptroller General for advance decision, include a statement that award has not been made. The reviewer at each level must state recommendations..

5114.407-4 -- Mistakes After Award.

- (d) The determinations at FAR 14.407-4(b) may be made only by the following:
 - (A) Each PARC, who shall exercise the authority in coordination with the activity's Chief Legal Officer (i.e., Command or Chief Counsel or Staff Judge Advocate).
 - (B) Each Division Commander within the USACE, who shall exercise the authority in coordination with the Division Counsel.
 - (C) The DASA(P).

5114.409 -- Information to Bidders.

5114.409-2 -- Award of Classified Contracts.

Take disposition action in accordance with AR 380-5.

AFARS -- Part 5115

Contracting by Negotiation

5115.000 -- Scope of Part

This Part contains only minimum essential policies and procedures. It does not attempt to restate policies contained in the FAR and DFARS or to duplicate the many excellent public documents that provide more detailed procedures and “how-to” information. The Army Source Selection Guide contains detailed guidance on the source selection process.

5115.001 -- Definitions

Formal source selection means contractor source selections for high dollar value or complex acquisitions where someone other than the contracting officer is appointed the Source Selection Authority (SSA).

Subpart 5115.1 -- Source Selection Processes and Techniques

5115.101 -- Best Value Continuum.

In using the best value approach, the Army seeks to award to an offeror who gives the greatest confidence that it will best meet the requirements affordably. This may result in an award being made to a higher rated, higher priced offeror where the decision is consistent with the solicitation’s evaluation factors and the Source Selection Authority (SSA) reasonably determines that the technical superiority and/or overall business approach and/or superior past performance of the higher priced offeror outweighs the cost difference. The SSA, *independently exercising prudent business judgment*, arrives at a Source Selection Decision based on the offeror(s) who proffers the best value to the Government. *The SSA shall not receive a recommendation from any individual or body as to whom shall receive the award and additionally shall not receive a rank order or order of merit list pertaining to the offers being evaluated.*

If threshold and objective performance requirements are identified in the Request for Proposals (RFP), the Army must communicate to offerors (a) how evaluation of objective performance requirements will be accomplished and (b) to the extent that performance above the threshold requirement is achieved, how the offeror will be credited for such performance. The Source Selection Evaluation Board, in conjunction with the SSA, and consistent with the solicitation’s hierarchy of Factors, Subfactors, and Elements, will review each offeror’s proposed achievement of objective requirements and make as informed a judgment as possible, based on the data available, as to whether the proposal to meet objective requirements is worth the Government’s approximation of the delta price/cost to achieve the objective requirement. The SSA, in the Source Selection Decision Memorandum, and consistent with the solicitation’s hierarchy of Factors,

Subfactors, and Elements, shall recognize and appropriately consider, in the Source Selection Decision Memorandum, the extent of the performance benefits afforded the Department of the Army by the level of objective performance expected to be achieved by the offeror.

5115.101-1 -- Tradeoff Process.

- (a) Tradeoff process should be used for all formal source selections, unless the SSA decides not to do so. The tradeoff process should be considered for other complex or high dollar value acquisitions whenever appropriate. Conduct source selections for architect-engineering services in accordance with FAR Part 36.

Subpart 5115.2 -- Solicitation and Receipt of Proposals and Information

5115.201 -- Exchanges With Industry Before Receipt of Proposals

- (c)

Early industry involvement and openness are the cornerstones to enhance a cooperative relationship with industry. Timely release of information to industry is essential to maximize the value of their inputs to the planning, requirements generation, and acquisition processes. This involves engaging industry during the drafting of solicitations through meetings and contracting business opportunity sites on the world wide web or other means. In competitive acquisitions, it is critical to balance the Government's obligation to ensure fair treatment and opportunities for all offerors, while protecting contractor proprietary, proposal and source selection information.

- (c)(6)

- (i) Draft RFPs (DRFPs) may be used when there are concerns with the statement of work or specifications or when there are significant technical risks and cost drivers. When a written acquisition plan is required (DFARS 207.103(c)) and a DRFP is not used, include rationale for not using a DRFP.

5115.204 -- Contract Format

- (e) HCAs may exempt individual contracts from the use of a uniform contract format and may delegate this authority no lower than to the PARC. The Deputy Assistant Secretary of the Army (Procurement) is authorized to exempt classes of contracts. Exemptions should not be granted without coordinating with affected contract administration and payment offices.

5115.204-2 -- Part I -- The Schedule

- (c) Section C, Description/Specifications/Statement of Work. The SOW, statement of objectives, or other description for major system acquisitions must reflect all pertinent MANPRINT considerations from the Operational Requirements Document (ORD) and

Mission Needs Statement (MNS). Also include any enhanced considerations resulting from market research and contributions from Integrated Product Teams. Include in the SOW or other description as specific, stand-alone functional requirements important MANPRINT issues or opportunities identified in paragraph 4 or 5 of the ORD.

5115.303 -- Responsibilities

(a)

- (1) The Army Acquisition Executive (AAE) or designee is the SSA for Major Defense Acquisition Programs, Major Automated Information System acquisition programs, and designated Army acquisition programs.
- (2) HCAs are delegated authority to appoint the source selection authority for --
 - (i) Acquisition Category II, III, and IV programs defined in DoDI 5000.2, Subpart 4.8.; and
 - (ii) Acquisitions not managed in accordance with DoDD 5000.1 for which formal source selection procedures are used.
- (3) HCAs must coordinate SSA appointments for ACAT II, III, and IV programs with the Milestone Decision Authority and any Program Executive Officer. HCAs cannot redelegate the authority to appoint the SSA for an ACAT II program.
- (4) The Deputy Assistant Secretary of the Army (Procurement) may appoint the SSA for any acquisition described in (a)(2).
- (5) HCAs for HQ AMC subordinate activities must send SSA nominations which require AAE approval to the addressee in 5101.290(b)(4) through the HQ AMC Command Counsel. Send the list of nominees in a sealed envelope marked "*Personal.*" Do not furnish copies to anyone other than the addressees in this paragraph.

(b)

- (2) Prepare a written source selection plan for all source selections. Tailor the contents and extent of the plan consistent with the dollar value and complexity of the proposed acquisition.
- (S-90) PEO/PM or functional proponent (non-PEO programs) for the acquisitions must --
- (a) Develop and implement the acquisition strategy.
 - (b) Prepare and obtain approval of the SSP before issuing the solicitation.

- (c) Coordinate with the HCA to recommend an official as the SSA, when authority to appoint the SSA has been delegated by the AAE;
- (d) Provide necessary funds for salaries, overtime, temporary duty travel, and other expenses of the source selection and provide office space, office, and administrative equipment, clerical support, and other necessary administrative support to personnel involved in the source selection.

5115.304 -- Evaluation Factors and Significant Subfactors

(b)(2) It is Army policy to establish the absolute minimum number of factors necessary for evaluation of proposals. Source selection factors may be subdivided into subfactors, that, in rare instances, may be further subdivided into elements if needed. Evaluation factors and, if used, subfactors and elements are the basis for assessing each offeror's ability to meet the Army's needs. They are the uniform baseline against which each offeror's proposal is compared to determine the proposal(s) which represent the best value to the Government. Factors and Subfactors must be limited to those which (a) are expected to surface real and measurable discriminators between offerors, and (b) have value enough to warrant the payment of a meaningful cost/price premium to obtain the measured discrimination. Evaluation factors, subfactors, and elements:

- (i) Must be written in sufficient depth to communicate the measures of merit used to determine how the proposal will be evaluated and rating determined;
 - (ii) Include only those specific program characteristics that are significant enough to have an impact on the source selection decision, such as those identified through program risk analysis;
 - (iii) Set forth in Section M of the draft and final RFPs, Evaluation Factors for Award. In addition, the relative importance of all factors, subfactors, and elements shall be specified in Section M of the RFP; and
 - (iv) Must be qualitative. Numerical weighting (i.e., assigning points or percentages to evaluation factors and subfactors) is not an authorized method of expressing the relative importance of these factors and subfactors. Evaluation factors and subfactors must be definable in readily understood qualitative terms (i.e., adjectival, colors, or other indicators, but not numbers) and represent the key areas of importance to be considered in the source selection process. The direction of this subparagraph is **not** waivable, either on an individual or class basis, as an AFARS deviation.
- (d) When the Government intends to evaluate the cost of future production or performance beyond the instant contract, and to include these costs as part of the basis of selection and award, clearly specify the evaluation procedures for such costs in the solicitation. Do not use Government estimates of future or life cycle costs in an evaluation unless the Government's procedures and methodologies for developing the costs are specified in the solicitation.

(S-90) To the extent that measurable manpower and personnel integration (MANPRINT) discriminators, of value to the Government, are identified, evaluate MANPRINT in source selections for major systems, designated acquisition programs and, when appropriate, other acquisition programs. Evaluate MANPRINT issues or opportunities that are specific, stand-alone functional requirements as identified in paragraph 4 or 5 of an ORD.

5115.305 -- Proposal Evaluation.

(a)

(1) *Cost or price evaluation.* Do not score cost or price or combine it with other non-Price/Cost related aspects of the proposal evaluation.

(3) *Technical evaluation.* When divergent evaluations exist, and none of the evaluators have misinterpreted or misunderstood any aspects of the proposals, consider providing the SSA with written majority and minority opinions.

(4) *Cost information.* The SSA shall determine whether cost information will be provided to technical evaluators, when and what information shall be provided, and under what conditions.

5115.306 -- Exchanges With Offerors After Receipt of Proposals

All exchanges with offerors after receipt of proposals must clearly identify the types of exchanges, i.e., clarifications, communications or discussions.

(c) *Competitive Range.* The SSA must approve the competitive range determination.

5115.308 Source selection decision

A source selection decision document must be prepared for all source selections and reflect the SSA's integrated assessment and decision. The document must be the single summary document supporting selection of the best value proposal consistent with the stated evaluation criteria. It must clearly explain the decision and documents the reasoning used by the SSA to reach a decision. The document should be releasable to the General Accounting Office and others authorized to receive proprietary and source selection information. When releasing a copy to offerors or to anyone not authorized to receive proprietary and source selection information, redacted material should be limited to that which is proprietary and that which must continue to be protected as source selection information.

5115.404-4 -- Profit

5115.404-76 -- Reporting Profit and Fee Statistics.

Use the Army Weighted Guidelines Software for reporting DD Form 1547 data. The software and instructions for its use can be acquired from the addressee in 5101.290(b)(6), *Attn: WGL*.

5115.406 -- Documentation

5115.406-1 -- Prenegotiation Objectives

(b) Document prenegotiation objectives in a Prenegotiation Memorandum which sets forth the significant details of the proposed contracting action and the course the contracting officer proposes to pursue. Prepare, review, and approve Prenegotiation Memoranda in accordance with the activity's business clearance procedures.

For sole source actions, the Prenegotiation Memorandum documents compliance with law, regulations and policy and also becomes the record documenting the exercise of good business judgment. The Prenegotiation Memorandum shows the contractor's methodology and how he developed his proposal position (to the extent it can be determined from the contractor's proposal and fact finding efforts), how the price/technical/audit reviewers developed their recommendations, and what the negotiator did in developing an independent pre-negotiation position considering the pricing, audit, and technical analyses and recommendations. An understanding of the development of each position is important in order to adequately prepare for negotiations. The Director, Defense Procurement's web site (<http://www.acq.osd.mil/dp/cpf/>) has posted on it the DoD Contract Pricing Reference Guides which discuss in depth pricing techniques and factors that should be considered when developing the negotiation position.

For competitive negotiated acquisitions using formal source selection procedures, the Prenegotiation Memorandum should include the source selection plan, as well as section "M" of the solicitation. It should discuss the evaluation criteria and the basis for award contained in the solicitation, set forth a summary schedule of offerors' prices and the technical and cost evaluations. It should also include a determination and supporting discussion of offerors determined to be within and outside the competitive range and a summary of the technical and cost deficiencies to be discussed with offerors selected to participate in the discussions.

A Prenegotiation Memorandum for a competitive acquisition is largely a review of the basis for source selection to ensure that full documentation and support exist to withstand any subsequent protest or allegation that the price was not fair and reasonable.

5115.406-3—Documenting the Negotiation

(a) Both the prenegotiation objectives and the results of the negotiation must be documented in sufficient detail to clearly set forth all significant aspects of the contract action.

5115.407-4 -- Should-Cost Review

(b) *Program should-cost review.*

(4) In coordination with the PM or other customer, the HCA must establish the requirements and format for the program should-cost team report.

Subpart 5115.6 -- Unsolicited Proposals

5115.606 -- Agency Procedures

Army procedures pertaining to unsolicited proposals are found in Appendix XVIII of DA Pamphlet 70-3, Army Acquisition Procedures. DA PAM 70-3 may be found in the Library section of the Homepage of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) and in the Defense Acquisition Deskbook.

AFARS -- Part 5116

Types of Contracts

Subpart 5116.2 -- Fixed-Price Contracts

5116.203 -- Fixed-Price Contracts with Economic Price Adjustment.

5116.203-4 -- Contract Clauses.

(d)

(2) See 5101.304(a)(4).

Subpart 5116.4 -- Incentive Contracts

5116.405 -- Cost-Reimbursement Incentive Contracts.

5116.405-2 -- Cost-plus-award-fee contracts.

(b) *Application.*

(2)

(A) Award fee, when properly used, is a valuable tool for motivating contractors to improve performance while, at the same time, providing Government personnel an opportunity for close monitoring of the contractor's performance (technical, management, schedule, and cost). The intended goal of award fee contracting is to motivate the contractor's performance in those areas critical to program success that are susceptible to measurement and evaluation. By entering into an award fee arrangement, the contracting officer initiates a process that incentivizes a contractor to improve performance and records the Government's assessment of the contractor's performance. Once the decision has been made to use an award fee contract, the evaluation plan and organizational structure must be tailored to meet the needs of the particular acquisition. The award fee plan must clearly identify the specific award fee evaluation criteria for assessing contractor performance. The criteria should take into account program risk, as well as be appropriate for the designated award fee period.

(B) The award fee pool is the total of the available award fee dollars for each evaluation period for the life of the contract. Base fee is not earned and is, therefore, paid on a regular basis without the contractor's performance being evaluated. Since the available award fee during the evaluation period must be earned, the contractor begins each evaluation period with 0% of the available award fee and works up to the evaluated fee for each evaluation period. Contractors do not begin with 100% of the available award fee and have deductions withdrawn to arrive at the evaluated fee for each evaluation period. In addition, contractors should not receive award fee (above the base fee) for simply meeting contract requirements. Earning of award fee should be in accordance with the award fee plan, and should be directly commensurate with the level of performance under the contract. A contractor should not receive the maximum amount of award fee under a contract without a demonstrated superior level of performance, as provided for in the award fee plan. Maximum contract fee is the sum of all fees (not just the award fee) and incentives payable under the contract, including performance and subcontracting incentives.

(C) When an Award Fee Evaluation Board (AFEB) will be used, the PARC or authorized contracting officer must appoint an Award Fee Determining Official (AFDO) in writing, unless the PARC will serve as the AFDO. The AFDO will appoint in writing the AFEB and its chairperson. Such appointment letters will clearly outline the responsibilities and limitations of the AFEB and its chairperson. AFEB membership should consist of those contracting and acquisition management personnel, including contract administration personnel, most knowledgeable of the requirements and contractor performance in the areas to be evaluated. Selection of board members must be coordinated with the Program Executive Officer or other management official responsible for technical requirements. The AFEB chairperson is responsible for ensuring that all AFEB evaluators are sufficiently trained in their responsibilities. AFEBs and AFDOs will document the rationale for their decision(s). The AFDO may alter the AFEB's recommended award fee; however, it must be documented in sufficient detail to show that the integrity of the award fee determination process has been maintained.

5116.5—Multiple Award Task Order Contracts.

(1) Requiring documentation and using procedures beyond those required by FAR Part 16.5 adds little or no value to the selection/placement of task orders under Multiple Award Task Order (MATO) contracts. **In this regard, proposals submitted in response to competition under MATO contracts should be limited to no more than five pages, including attachments. Approval in writing by the Principal Assistant Responsible for Contracting is required for deviating from this five page limitation.**

Contracting Officers are admonished to keep submission requirements to a minimum and use streamlined procedures, including oral presentations.

(2) Ordering decisions must be appropriately documented. Critical decisions, such as the use of the exceptions from the fair opportunity to be considered process described at FAR 16.505 (b)(2) or the selection of a higher priced proposal because of its greater technical merit, must be documented in sufficient detail to justify the decision.

(3) With the exception of architect-engineer contracts, price shall be considered in the ordering process. While awards should be made on the basis of best value, award decisions shall take price into consideration.

(4) Past performance information, including quality, timeliness, and cost control on earlier orders placed under the same MATO contract, should be considered in the ordering process. Past performance information should already be readily available in program and technical offices. Requests for contractor submission of past performance information with proposal submission under MATO contracts shall be eliminated.

Subpart 5116.6 -- Time-and-Materials, Labor-Hour, and Letter Contracts

5116.601-90 -- Payments.

The contracting officer must document the contract file with a justification when the five percent withholding of payments required by FAR 52.232-7(a)(2) is reduced or waived.

5116.603 -- Letter Contracts.

5116.603-2 -- Application.

(c)(3) PARCs may authorize an additional period subject to the limitations in DFARS 217.7404-3.

AFARS -- Part 5117

Special Contracting Methods

Subpart 5117.1 -- Multiyear Contracting

5117.171 Multiyear contracts for services

(a)

(3) Head of agency approval is required by 10 USC 2306(g) and 10 USC 2829.

Subpart 5117.2 -- Options

5117.204 -- Contracts.

(e) PARCs may approve use of options that extend contracts beyond the five-year regulatory limit.

5117.290 -- Addition of Option Clause or Quantities to Contracts After Award.

Modification of contracts to incorporate option clauses or additional option quantities after award is a noncompetitive action and cannot be done without prior approval in accordance with FAR 6.304. Such requests must be documented to give the reason for the proposed modification and the potential impact of disapproval.

Subpart 5117.90 -- Job Order Contracts

5117.9000 -- Scope of Subpart.

(a) Job Order Contracting (JOC) is an alternative contracting method to fulfill requirements for real property maintenance and repair and minor construction projects at installation level (post, camp or station), with an estimated value exceeding \$2000, but not exceeding the amount of RPMA authority delegated to the installation by the MACOM and/or HQDA. In general, proposed projects valued at \$2,000 or less are considered inappropriate for ordering under JOC because of the administrative costs associated with processing JOC orders and the simplified purchase methods available for these actions.

(b) Additional information on executing JOC is found in the JOC Guide published by the JOC Steering Committee. The guide may be obtained from Assistant Chief Of Staff (Installation Management), Attn: DAIM-FDF-M, 7701 Telegraph Road, Bldg. 2594, Alexandria, VA 22315-3800.

5117.9001 -- Definitions.

As used in this subpart --

“Coefficient” means a numerical factor that represents costs (generally indirect costs) not considered to be included in “Unit Price Book” unit prices (e.g., general and administrative and other overhead costs, insurance costs, bonding and alternative payment protection costs, protective clothing, equipment rental, and also contractor’s profit). Contingencies such as changes in wage rates and the effect of inflation in option years, are also covered in the coefficient when Economic Price Adjustment is not used. Coefficients proposed by offerors are multiplied times the unit prices in the Unit Price Book to price a job or project on individual orders. The coefficient(s) proposed by the offeror and accepted by the Government are incorporated in the JOC.

“Job order contract” means an indefinite-delivery, indefinite-quantity contract which is awarded on the basis of full and open competition and effective competition and is used to acquire real property maintenance and repair or minor construction at installation (post, camp, or station) level. The JOC includes a comprehensive collection of detailed repair, maintenance and minor construction task descriptions or specifications, units of measure and pre-established unit prices for each of these discrete tasks. Each project or job ordered under a JOC is normally comprised of a number of pre-described and pre-priced tasks.

“Non-prepriced task or item” means a necessary, but incidental, part of a job or project ordered or to be ordered under a JOC that is not susceptible to unit pricing using the pre-priced tasks in the Unit Price Book or database incorporated in the JOC. The coefficient developed for a prepriced task or item must not be applied to a non-pre-priced task or item.

“Unit Price Book” means the compilation of real property repair, maintenance, and minor construction tasks, associated units of measure and unit prices that is used in job order solicitations and JOC. JOC unit prices include direct material, labor and equipment costs, but not indirect costs or profit which are addressed in the coefficient(s). Depending upon the source of the data base used, the UPD may contain from 25,000-90,000 line items.

5117.9002 -- Applicability.

(a) JOC may be used to acquire real property maintenance and repair or minor construction at an installation.

(b) JOC must only be used for the projects covered at 5117.9000. Installation facilities engineering support services, such as utility plant operation, custodial, grounds maintenance, refuse collection and disposal, and similar work cannot be acquired using JOC. Architect-engineer services as defined in FAR 36.102 cannot be acquired under JOC. However, informal (shop) drawings, incidental to the job, reflecting the plan of action and the completed project, are anticipated under JOC.

5117.9003 -- Use of Job Order Contracts.

5117.9003-1 -- Characteristics.

In general, a JOC involves the following unique characteristics:

- (a) Use of a "Unit Price Book" to pre-price the direct material, labor, and equipment costs associated with tasks listed in the book coupled with one or more "coefficient(s)" to cover contractor profit and indirect costs.
- (b) A solicitation and contract which contain a large volume of pre-priced, elementary, facilities engineering type, detailed tasks that are normally available on an automated database;
- (c) Competitive source selection based on an integrated assessment of capability and past performance, technical and management proposals, sample task proposal, and the coefficient(s) proposed for the base year and option years, as appropriate (best value). (Brooks Act A-E selection procedures must not be used for evaluation or award of JOC.)
- (d) An indefinite-delivery, indefinite-quantity (task order) contract which provides for the use of negotiated, definitive, bilateral orders (i.e., the JOC contractor formally accepts the order, as mutually agreed, by signing the DD Form 1155; see 5117.9004-3(h)); and
- (e) Each signed task order becomes, in effect, a fixed price, lump sum contract and is managed accordingly.

5117.9003-3 -- Planning and Coordination.

(a) JOC should be considered when an installation's projected real property repair, maintenance and minor construction workload is anticipated to be of such a yearly volume that the benefits to be derived from JOC use are greater than the costs of the Government resources and contractor overhead associated with establishing and using a JOC. These costs include the total Government resources required to award, use, monitor and administer the JOC and JOC orders as well as management oversight and functional support of the total JOC process. The calculated workload for a potential JOC should exclude --

- (1) Work normally reserved for 8(a) or set aside for small disadvantaged businesses;

(2) Repetitive tasks that are not complex (such as interior and exterior painting, sanding and finishing/sealing of floors, roofing, etc.) and are traditionally covered by requirements contracts;

(3) Work covered by contracts awarded under the Commercial Activities Program; and

(4) Work that can be effectively and economically accomplished by in-house resources.

(b) A market survey must establish that more than one capable firm is willing to compete for a JOC at the installation.

5117.9004 -- Procedures.

5117.9004-1 -- Presolicitation.

(a) The DPW must document the decision and plan to use a JOC in support of an installation or activity. The installation commander, who cannot re-delegate this authority, must approve the decision and plan. The decision to use JOC must also be documented and approved when the JOC is re-solicited.

(b) To solicit for a JOC, the Government must develop task specifications and a Unit Price Book tailored to the needs of the installation to be supported. Any special range pricing (to get quantity discounts) of units associated with the requirements of known JOC projects to be ordered must be specified.

5117.9004-2 -- Solicitation.

(a) The contracting officer, in coordination with the installation DPW, must assure that the specifications and Unit Price Book have undergone technical review and validation and are tailored to meet the projected requirements of the installation and local economic conditions. This is a critical step in implementing JOC and is required to minimize the need for non-pre-priced items during the processing of task orders. The projects proposed to be ordered under JOC must be identified in internal documentation, and a representative description must be included in the solicitation.

(b) To encourage competition and lower coefficients, the JOC solicitation must include realistic and reasonable annual minimum and maximum dollar amounts for projected requirements. Generally, the higher the minimum is, the lower the coefficient proposed will be. The annual maximum is connected with the bonding requirement (see the definition at 5117.9001).

(c) The guaranteed minimum for the basic contract and each option period is required. A new minimum guarantee must be obligated upon exercise of an option. The minimum guarantee need not be the same amount that was used to secure the work of the basic contract. However, it must be more than a token amount so that adequate consideration exists.

(d) Because of the complexity of small and small disadvantaged business utilization issues in relation to JOC, a DD Form 2579 is required for proposed JOC solicitations. The Small Business Specialist must send a copy of the DD Form 2579 to the Director, Office of SADBUI.

(e) The Government's unilateral right to withdraw a proposed job or order before or after receipt of contractor's proposal must be included in the solicitation.

(f) The solicitation must explain the make-up of the Government unit prices and specify what types of costs, as a minimum, must be covered by the coefficient. (See 5117.9001 for definition.) Offerors must specify in their proposal what additional types of costs are included in their coefficients. These additional costs may be incorporated in the contract, if appropriate, and may preclude later disagreements over non-pre-priced tasks. "Pricing" of option periods, to include consideration of any wage adjustments when Economic Price Adjustment is not used (see 5117.9004-2(i)), must be covered by contractor's coefficient(s) proposed for those periods. Separate coefficients may be used for normal working hours and other than normal working hours.

(g) JOC solicitations and contracts must clearly notify offerors of initial and continuing bonding requirements. The term "bonding" used in this paragraph includes any relevant alternative payment protection as discussed in FAR 28.102-1. Bonding must be sufficient to cover the stated estimated annual maximum contract value. No JOC contract shall cite the total estimated maximum value of the contract (including option periods) as the estimated annual maximum value, although there may be language in the contract allowing ordering beyond that "maximum" but less than the estimated value of the total contract with option periods. The estimated annual maximum value will be a reasonable figure based on historical experience and known workload for the coming year. This approach should avoid the prior difficulties associated with adjusting bonding coverage every time a new task order is awarded. Because contractors can now plan their liability for premiums, and because they get unliquidated/unneeded premiums reimbursed by the bonding agent, payment incrementally through the use of the coefficient becomes both logical and reasonable. Contractors must be clearly notified, in the solicitation and contract, of their responsibility for ensuring sufficient bond coverage during the course of the contract. All costs associated with bonding (specifically including bond premiums) shall be included in the coefficient. If the estimated annual maximum value is exceeded, FAR 28.102-2(a) and (b) apply. Since the bond premium is repaid through the coefficient and the coefficient is paid as an indirect cost under progress payment or other normal payment provisions there will be no separate repayment(s) for bond premiums.

(h) JOC solicitations and contracts must contain provisions for making annual adjustments to the option year(s) prices. This must be done by updating the base year coefficient using criteria and predetermined formulas in an economic price adjustment (EPA) clause. Adjustments to the base year coefficient will be based on the Engineering News Record (ENR) Building Cost Index (BCI) as published by McGraw Hill. The ENR index is a weighted aggregate of changes to construction costs. For computation of the EPA, the BCI for the city closest to the supporting installation will be used. EPA will not be used for JOCs awarded outside the United States; nor shall it be used under National

Guard Bureau, and other, JOC contracts employing an annually updated R.S. Means formula. The clause set forth in 5152.237-9000 must be used in JOC contracts in accordance with this paragraph. Use of EPA under regional or multi-site JOCs with multiple coefficients is at the discretion of the contracting officer on a case-by-case basis but should be declared in the affected solicitations. Any deviation from the required use of EPA (and this EPA clause) for pricing option years, or the use of the specified index (BCI), must require prior approval from DAIM-FDF-M and SAAL-PP.

(i) Job order solicitations must be accorded the same type of planning and management review as commercial activities procurement actions.

5117.9004-3 -- Ordering.

(a) *Summary of ordering process.* After the requirement is validated in accordance with command or installation procedures and an estimate is prepared to determine suitability of the project for the JOC, the SOW is presented to the contractor with a request for a proposal. The contractor then prepares a proposal that identifies the tasks and quantities necessary to accomplish the job. This proposal is subsequently evaluated, and agreement is reached on quantities, time, performance period, etc., through discussions and negotiations. After agreement, a fixed-price bilateral order is prepared. (Some integral non-pre-priced work may be included in the order. (See (e)(2).)

(b) *Statement of work.*

(1) The SOW for the proposed order must contain sufficient detail to enable the Government to develop an independent government estimate (IGE), for orders \$100,000 or more, and to assure that the contractor can properly prepare a responsive and cost effective proposal with a minimum of non-pre-priced tasks.

(2) The SOW must be updated prior to issuing the order to reflect the details of the negotiated agreement and to include significant quantities, methods of construction, quality levels, and number of days to complete the work. This updated SOW may also include a statement that the work must be performed in accordance with the method and quality of construction specified in the contractor's proposal. Other pertinent aspects of the contractor's proposal may also be specifically cited as deemed appropriate; however, the entire contractor's proposal will not ordinarily be made a part of the SOW. The updated SOW must contain sufficient detail to allow the Government to effectively monitor the contractor's performance.

(c) *Independent Government estimate.*

(1) In accordance with FAR Part 36.203, a detailed IGE for orders \$100,000 or more, should be obtained prior to evaluation of the contractor's proposal. This IGE is in addition to the earlier gross estimate, which helped determine whether the proposed work was appropriate for JOC. The IGE shall be prepared using the same method required of the contractor (e.g., the Unit Price Book). A

detailed analysis of all task orders is required for orders less than \$100,000 in order to aid in the determination of a fair and reasonable price.

(2) Total or lump sum IGEs are not acceptable for proposed JOC task orders. The IGE must be sufficiently detailed to be useful in evaluating, not only the reasonableness of the contractor's proposed price, but also any costs associated with non-pre-priced tasks.

(3) The contracting officer or, if applicable, the ordering officer, must insure that significant differences among the SOW, the IGE, and the contractor's proposal are reconciled and documented prior to placing the order.

(4) To the extent practicable, identify non-pre-priced tasks in advance and treat them as discrete items in the IGE to help determine if the price of the non-pre-priced work is reasonable and to help calculate the relative value of the non-pre-priced work.

(d) *Negotiations.*

(1) Negotiations on orders \$100,000 or more may not begin without an Independent Government Estimate (IGE).

(2) Negotiations will further reconcile differences among the IGE, SOW, and the contractor's proposal.

(3) At the conclusion of negotiations, the contracting officer or ordering officer must prepare a memorandum of negotiation and place it in the contract file.

(e) *Limitations.*

(1) The value of non-pre-priced work under an order must not exceed 10 percent of the value of the pre-priced work.

(i) The value of the pre-priced work must be computed by multiplying the coefficient(s) times the appropriate unit price(s) in the Unit Price Book.

(ii) When the contract allows, indirect costs and profit for non-pre-priced work may be attributed by application of a solicited and pre-agreed rate to be applied to the bare labor, equipment, and material costs of the non-pre-priced work.

(iii) Description of non-pre-priced work must not be manipulated or forced to fit under a pre-priced line item, either to avoid including non-pre-priced line items in the order or to reduce the value of non-pre-priced line items in an attempt to circumvent the limitation in (e)(2).

(2) Except as provided in paragraph (3) below, the value of non-pre-priced work under an order shall not exceed 10 percent of the value of the pre-priced work.

(3) Normally, if the value of the non-prepriced work exceeds 10 percent, then the non-prepriced work should be reduced, eliminated or performed in house or the job must be acquired using other contracting methods. However, contracting officers may exceed the 10 percent if the non-prepriced portion of the order involves urgent or emergency situations or if the contracting officer determines it is a good business decision. The contracting officer shall negotiate the modification and make a determination that the price is fair and reasonable.

(f) *Funding.* Funds for the guaranteed minimum amount must be obligated on the awarded JOC. Contract performance and cumulative orders under the guaranteed minimum amount are not limited to the fiscal year in which the contract becomes effective. Funds beyond the guaranteed minimum required to complete a proposed project must be obligated by each task order. Orders beyond the guaranteed minimum must also comply with the bona fide need principles in AR 37-1, statutory and other restrictions on year-end spending.

(g) *Forms, numbering and reports.*

(1) Use DD Form 1155 to issue task orders. Include the following statement in Block 19 of the DD Form 1155:

“Contractor must sign this task order in Block 16 and return a copy.
The signature in Block 16 reflects contractor’s acceptance of the task order.”

(2) Use Standard Form 30 to execute modifications to a task order. When signed by an Ordering Officer, the SF 30 must be modified by deleting the words “Contracting Officer, United States of America” and typing in “Ordering Officer, Authorized Representative of the Contracting Officer”.

(3) The contracting officer responsible for the actions of specific ordering officers must retain control over assignment of all Supplementary Procurement Instrument Identification Numbers (SPIINS) related to JOC task orders. (See DFARS Subpart 204.70.)

(4) The contracting officer must also be responsible for ensuring timely preparation and submission of procurement reporting forms and related reports and data (e.g., DD Forms 350 and 1057).

(5) Automated versions of forms may be used for JOC if authorized.

(h) *Distribution.* A copy of all JOC orders must be sent to the contracting office appointing ordering officers, the Finance and Accounting Office, the office or individual assigned responsibility for inspection and technical administration of the contract, and any appointed COR. The contracting officer must maintain the permanent record of each transaction.

5117.9005 -- Contract Administration.

Contractor performance evaluations must be prepared for all orders of \$100,000 or more and submitted to the CCASS in accordance with 5136.201.

5117.9006 -- JOC Ordering Officers.

(a) Appointment.

- (1) The appointment of a special “JOC ordering officer” is authorized, but is only required when the contracting officer will not be executing the task orders. Appointments of ordering officers under each JOC must be minimized.
- (2) JOC ordering officers must be nominated by the Director of Public Works (or equivalent facilities engineering manager) and appointed by letter similar to that in 5153.9001 (see 5101.602-2-90), tailored for JOC, signed by the contracting officer, and approved at a level above the contracting officer, or the chief of the contracting office.

(b) Training. All JOC ordering officers must receive specific training and orientation from the responsible contracting office. This training must cover policy and procedures for operation of JOC, including this AFARS coverage, and shall specifically address the ordering officer’s authority, limitations and responsibilities, to include ethics, conflict of interest, and potential pecuniary liabilities.

(c) Authorization and limitations.

- (1) JOC ordering officers may sign task orders under JOC on behalf of the Government when authorized by their appointment letter and the terms of the contract, provided that the total value of the order is \$100,000 or less and the value of any non-pre-priced item(s) does not exceed \$2,500.
- (2) JOC ordering officers may be authorized to sign task orders of greater value (but not to exceed \$500,000) on behalf of the Government, if determined necessary to realize the benefits of JOC, provided that --
 - (i) adequate management controls are in place (e.g., contracting officer oversight);
 - (ii) adequate training is provided;
 - (iii) the contracting officer approves; and
 - (iv) the value of any non-pre-priced item(s) does not exceed \$2,500.
- (3) May execute modifications to existing task orders provided that --

- (i) the contracting officer specifically delegates this authority in the JOC ordering officer appointment letter (generally will include modifications under the Changes clause, Changed Site Conditions, etc.);
- (ii) the amount of the modification does not exceed the ordering officer's authority;
- (iii) pricing is accomplished by using the unit price book; and
- (iv) the total value of non-prepriced items under the order as modified does not exceed the ordering officer's authority.

(4) If applicable, numbers for modifications shall be obtained from the contracting officer. Copies of all modifications shall be immediately provided to the contracting officer for reporting. Modifications effecting changes to termination actions, or work suspensions, shall be executed by the contracting officer because of legal consideration issues and the potential fiscal issues involved.

(d) *Responsibilities.* JOC ordering officers --

- (1) Are responsible for ensuring that all proposed JOC project descriptions and task orders express the Government's actual requirements, validated in accordance with command and installation procedures, in a professional and understandable manner;
- (2) Must ensure that an IGE, for orders \$100,000 or more, is prepared prior to evaluating the contractor's proposal;
- (3) Must ensure that adequate and proper funds are available for the project prior to issuing an order;
- (4) Must notify the contracting officer of any additional bonding requirements associated with new orders or changes in the value of existing orders;
- (5) As the principal point of contact for technical and engineering issues, must respond to requests for technical clarification from the JOC contractor, documenting both the request and the response, and conduct the joint pre-proposal site survey, assuring that the contractor is provided access to all required facilities, plans, and other documents required for full knowledge of the scope and conditions of the required job;
- (6) May evaluate contractor proposals; compare them with the IGE; negotiate scope of work, quantities, and performance period for pre-priced and non-pre-priced tasks; and may negotiate price on non-pre-priced tasks valued at \$2,500 or less for orders within the JOC ordering officer's signature authority;

(7) For orders estimated to exceed the JOC ordering officer's signature authority, the JOC ordering officer must generally be responsible for evaluation of contractor proposals for proposed orders and may be authorized to solicit such proposals and clarify and negotiate units and quantities of pre-priced tasks; and must assist the contracting officer, as requested, in negotiations and resolution of variances between the IGE and the contractor's proposal;

(8) Must be responsible for maintaining complete contract file documentation for each order and modification executed, including a record of all related correspondence and actions taken prior to award of the order and in the order administration phase;

(9) Must be responsible, with the Director of Public Works, for assisting the contracting officer in technical monitoring of the contractor's performance of orders issued under JOC to include --

- (i) Monitoring compliance with the SOW and schedule;

- (ii) Contractor or supplier compliance with the clause at FAR 52.225-5, Trade Agreements (Apr 2000);

- (iii) Davis-Bacon Act wage compliance;

- (iv) Assessment and validation of percentage of completion for progress payment purposes;

- (v) Recommendations to the contracting officer for changes to existing orders, beyond the ordering officer's authority;

- (vi) Documenting and quickly reporting to the contracting officer systemic or recurring problems in contractor performance;

- (vii) Prioritization of orders when required (in coordination with the DPW and appropriate installation officials), provided no increase in cost is involved; and

- (viii) Preparation of any JOC status reports required by command, installation, or DOC regulations or directives or as requested by OACSIM or HQDA;

- (ix) The above includes preparation of, or input for, performance evaluation reports (see 5136.201);

(10) Must send the complete record file to the contracting officer upon completion, and keep for DPW files, additional copies of documents required for continuing DPW responsibility (e.g., as-built drawings and warranties); and

(11) Must identify and report to the DPW and the contracting officer any recurring or significant inaccuracies or omissions in the task specifications of the Unit Price Book contained in the job order solicitation or JOC and propose needed changes.

5117.9007 -- Contracting Officer Responsibilities.

(a) The contracting officer is the official ultimately responsible for management of all aspects of JOC, including the actions of any JOC ordering officer, COR, and member of the DPW staff who is carrying out functional oversight responsibilities related to JOC administration.

(b) The contracting officer must issue orders under JOC, and modifications to such orders, which a JOC ordering officer is not authorized to execute. In general, all orders exceeding the simplified acquisition threshold or involving non-pre-priced tasks exceeding \$2,500 must be executed by a warranted contracting officer, but see 5117.9006(c)(2) for an exception.

(c) Only the contracting officer may exercise an option to extend, or issue any modification to, a job order contract (as opposed to an order under same).

(d) The JOC contracting officer must ensure that all orders and modifications to orders, together with significant supporting documentation issued outside the contracting office, are duly received, recorded, and reported and that such orders are regularly reviewed for completeness and compliance with AFARS and sound business practices. At least twice a year, the contracting officer must ensure that ordering officer files and procedures are reviewed and that a representative sampling of orders is selected for tracking from initiation of the requirement to final payment and close-out of the order.

5117.9008 -- Internal Controls.

(a) The internal control program must include the following:

(1) Separation of duties and responsibilities to establish internal checks and balances.

(i) Project scoping and project quality assurance/acceptance activities will be kept separate. Individuals involved with project scoping and development as well as proposal negotiations with the contractor will not be the same individual responsible for monitoring quality assurance. The responsibility for recommending acceptance of completed work will remain with separate quality assurance personnel. Alternatives are acceptable; however, they must meet the intent of AFARS 5117.9008(a)(1).

(2) Clear assignment of responsibilities and authority throughout the JOC process.

(b) An internal control JOC action and documentation checklist, tailored to the needs of the command or installation shall be developed to assist personnel responsible for management of JOC. Activities may use those measures outlined in the Internal Control and Review Plan, Appendix D of the JOC Guide to supplement existing internal control plans.

AFARS PART 5118--RESERVED

AFARS -- Part 5119

Small Business Programs

Subpart 5119.2 -- Policies

5119.201 -- General Policy.

(b)

(i) Each program and project manager must provide a point of contact to the appropriate command Small Business Specialist to assist in identifying potential products or services suitable for award to small or small disadvantaged businesses.

(d)

(6) The Director, Office of SADB, must be afforded an opportunity to comment on, and contribute to, the performance evaluation of associate directors, who must be afforded the same opportunity for the principal Small Business Specialists at subordinate activities.

(7)

(a) At those contracting activities where there is a resident SBA Procurement Center Representative (PCR), the Small Business Technical Advisor (SBTA) will be assigned full time to the Office of SADB and be supervised by the chief of the office. The SBTA cannot be a Small Business Specialist.

(b) At those activities where the assignment of an SBTA is not required, but where requirements are technically complex, a technical point of contact must be identified to the PCR and Small Business Specialist. Upon request, the technical contact will provide the PCR and Small Business Specialist technical advice and information to support their reviews of acquisition actions.

(c) Duties of the SBTA may include the following types of technical assistance:

- (1) Explaining and interpreting drawings, specifications, and other technical data.
- (2) Providing information on the requisite professional skills, facilities, production equipment, and other necessary capabilities required for production, testing, quality control, etc.
- (3) Arranging for technical personnel to provide assistance on subject matter outside the SBTA's expertise.
- (4) Helping identify acquisitions which are candidates for breakout.
- (5) Helping identify candidates for the Small Business program, Small Disadvantaged Business program, Women-Owned Small Business program, Service-Disabled Veteran-Owned Small Business program, Veteran-Owned Small Business program, Historically Underutilized Business Zone program, and Historically Black Colleges and Universities, Minority Institutions, Hispanic Serving Institutions, and Tribal Council Universities program.
- (6) Reviewing acquisition plans.

(d)(9)(B)

- (1) To facilitate the review of the DD Form 2579, the contracting officer must:
 - (i) Prepare the DD Form 2579 with sufficient lead time to permit the cognizant Small Business Specialist and the SBA PCR to review and sign it prior to transmitting the Commerce Business Daily synopsis notice if one is required.
 - (ii) Keep the original DD Form 2579 in the contract file and send copies to the SBA PCR and activity Small Business Specialist.
- (2) The Small Business Specialist serving the contracting office must:
 - (i) Number Item 1, Control No., on the DD Form 2579, consecutively starting with "1" at the beginning of each FY, and adding the last two digits of the FY, e.g. 1-96, 2-96.
 - (ii) Review and sign the DD Form, 2579. If the SBA procurement center representative lacks the necessary security clearance to review the DD Form 2579, the contracting officer must document the file by so annotating that there is no cleared SBA representative. The form then satisfies FAR 19.402(b) requirements.

(3) When completed and until the date of contract award, the DD Form 2579 must be made available only to personnel who have a “need to know”. Copies distributed outside the Army must be marked “For Official Use Only.”

(e) Small Business Specialists must be appointed by the commander of each command or subordinate activity responsible for a contracting office. The commander of each major command must appoint an Associate Director for SADBUs.

(A) Only individuals who possess business acumen and knowledge of Army contracting policy and procedures and who have the training and background to accomplish the objectives of the overall small business program can be appointed associate directors and Small Business Specialists.

(B) Before appointing an associate director, the commander must submit a summary of the candidate’s qualifications to the Director, Office of SADBUs, for review and shall consult with the Director. A copy of the appointment document must be sent to the Director, Office of SADBUs.

(C) The appointment of other Small Business Specialists must be coordinated in advance with the appropriate associate director. Where a full-time specialist is appointed, they cannot be assigned to the contracting office. Where a part-time specialist is appointed, they should be the chief of the contracting office.

(D) Furnish the name, grade level, position, title, telephone numbers (commercial and DSN), and activity location of newly appointed Small Business Specialists to the Director, Office of SADBUs, within 30 calendar days after appointment. When applicable, identify the Small Business Specialist being replaced.

5119.202-1 -- Encouraging Small Business Participation in Acquisitions.

(a)

(1) If circumstances dictate consolidation, written justification supporting this action must be provided to the contracting officer by the program manager or requiring activity. The determination that a consolidated requirement cannot be placed under one of the preference programs must be approved by the HCA prior to release of the solicitation.

Subpart 5119.502 -- Setting-Aside Acquisitions

5119.502-2—Total Set-Asides

5119.502-2-70—Total Set-Asides for Small Disadvantaged Business Concerns

(a)

(2) The contracting officer shall determine the fair market price using the guidelines of FAR 19.806 and 19.807. The analysis used to determine the fair market price shall be documented in the contract file.

5119.505 -- Rejecting Small Business Administration Recommendations.

(d) Process appeals, on a case-by-case basis, in accordance with instructions from the Director, Office of SADB. Generally, the contracting officer will be requested to prepare and send a case file through contracting channels to the Director, Office of SADB. The SADB at each level must review the case. The case file must include:

- (i) A statement of attempts to resolve the matter.
- (ii) A response to each issue raised by SBA in its appeal.
- (iii) Supporting documents related to controversial aspects.

5119.506 -- Withdrawing or Modifying Set-Asides.

(b) If a SBA representative is not assigned or available, the Small Business Specialist must refer disagreements to the specialist's appointing authority.

Subpart 5119.6 -- Certificates of Competency and Determinations of Eligibility

5119.602 -- Procedures.

5119.602-3 -- Resolving Differences Between the Agency and the Small Business Administration.

(c)(i)

(B) The contracting officer must prepare the case and send through contracting channels and the addressee in 5101.290(b)(4) to the Director, Office of SADB. The Small Business Specialist at each level will review the case.

Subpart 5119.7 -- Subcontracting With Small Business, Small Disadvantaged and Woman-Owned Small Business Concerns

5119.704 -- Subcontracting Plan Requirements.

(a) Subcontracting plans required by FAR 19.702(a)(1) and (2) should be realistic, challenging, achievable, with positive percentage and dollar goals for subcontracting with Small Business (SB) concerns, Small Disadvantaged Business (SDB) concerns, Women-Owned Small Business (WOSB), Service-Disabled Veteran-Owned Small Business (S-D V-O SB), Veteran-Owned Small Business (V-SB), Historically Underutilized Business Zone (HUBZone) concerns, and Historically Black Colleges and Universities (HBCU),

Minority Institutions (MI), Hispanic Serving Institutions (HIS), and Tribal Council Universities.

5119.705 -- Responsibilities of the Contracting Officer Under the Subcontracting Assistance Program.

5119.705-4 -- Reviewing the Subcontracting Plan.

(d) Contracting officers must –

(i) Use the guide at Appendix DD to evaluate all subcontracting plans, except those for commercial items; and

(ii) Require submission of subcontracting plans that cover the required elements to their satisfaction, notwithstanding the score given a plan evaluated in accordance with Appendix DD. Plans are not acceptable if they do not—

(A) Adequately address the six required statutory elements; or

(B) Provide sufficient information to enable the contracting officer to answer affirmatively questions A through H of Appendix DD, Part 2, Number 8.

(iii) Carefully consider the acceptability of any plan with a score of 70 or fewer points. Identify those areas where the plan is deficient, and discuss them with the offeror to try to get the deficiencies corrected. After discussions, if plans are still scored at 70 or fewer points and are determined acceptable, include the rationale for that determination in the contract file. Provide a copy of the determination and rationale to the local Small Business Specialist.

Subpart 5119.708—Solicitation Provisions and Contract Clauses.

(b)

(1) When FAR 19.705-2(d) applies (e.g., see DFARS 215.605(b)(1)), include a notice in Section L of the solicitation to instruct offerors to submit subcontracting plans with their proposals. Also include a notice that, in addition to all other subcontracting plan requirements, the subcontracting plan must address and respond to the evaluation criteria related to subcontracting and included in the solicitation. Notwithstanding coverage in any other part of the proposal, the extent and nature of participation by Small Business concerns, Small Disadvantaged Business concerns, Women-Owned Small Business, Service-Disabled Veteran-Owned Small Business, Veteran-Owned Small Business, Historically Underutilized Business Zone Concerns, Minority Institutions, Hispanic Servicing Institutions, and Tribal Council Universities must be addressed as an integral part of the subcontracting plan.

Subpart 5119.8 -- Contracting with the Small Business Administration (the 8(a) Program)

5119.803—Selecting Acquisitions for the 8(a) Program.

(a) Associate Directors for SADBUs shall respond directly to general search letters from SBA. The Associate Director for SADBUs may redelegate this function to the SADBUs specialists at subcontracting contracting activities.

(b) The contracting officer, in coordination with the Small Business Specialist, shall respond to SBA requests for a specific requirement by offering the requirement (see 5119.804-2) or by explaining why the requirement is not being offered in accordance with SBA's request.

(c) Where a number of requirements are being offered to SBA for planning purposes, Associate Directors for SADBUs or their designated Small Business Specialists must identify the requirements to SBA. Specific individual requirements shall be offered in accordance with 5119.804-2(a).

5119.804 -- Evaluation, Offering, and Acceptance.

5119.804-2 -- Agency offering.

(a) The contracting office must inform the SBA and Associate Director for SADBUs. This notification represents a firm commitment to negotiate with the SBA, provided there is no material change in requirements, availability of funds, or other factors.

(14) The contracting officer must coordinate noncompetitive 8(a) offerings with a total estimated contract value above the thresholds in FAR 19.805-1(a)(2) with the local competition advocate, who will review the technical requirements for the supplies and services to ensure they are not overly restrictive.

5119.808 -- Contract Negotiation.

5119.808-1 -- Sole Source.

(a) The contracting activity must notify the Associate Director for SADBUs of the intent to proceed with the acquisition without further regard to the 8(a) procedures. Withdrawal of the 8(a) commitment must be documented.

(b) When direct negotiation with an 8(a) subcontractor does not proceed satisfactorily, the contracting officer must ask the SBA to enter negotiations promptly to expedite the award.

5119.810 -- SBA appeals.

(b) Process appeals in accordance with 5119.505.

5119.812 -- Contract Administration.

(c) Early recognition of deficiencies in contract performance and prompt notification to the subcontractor and SBA are of particular importance. Any indication that the subcontractor requires technical or management assistance must be promptly reported to the SBA office awarded the contract, and the contract file documented.

If the SBA fails to act in a timely manner to help the subcontractor take corrective action, the contracting officer must report this failure to the Associate Director for SADBUs, with recommendation for action. Matters that cannot be resolved with Associate Directors must be referred to the Director, SADBUs.

5119.890 -- Notification of Award.

Immediately after award of any 8(a) contract, the contracting officer must notify the Small Business Specialist of the SBA office to which award was made and the 8(a) firm's name and address, providing a description of the supplies or services, the quantity, dollar value, date of award and contract number. Furnish a copy of the notification to the Associate Director for SADBUs.

AFARS PART 5120—RESERVED

AFARS PART 5121--RESERVED

AFARS -- Part 22

Application of Labor Laws to Government Acquisitions

Subpart 5122.1 -- Basic Labor Policies

5122.001 -- Definition.

“Labor Advisor,” is the Labor Advisor, Contract Law Division, Office of the Judge Advocate General.

5122.101 -- Labor Relations.

5122.101-1 -- General.

(a)

- (i) The Labor Advisor grants departmental approval. The HCA or designee is authorized to contact a regional office of the Federal Mediation and Conciliation Service, National Mediation Board, or National Labor Relations Board for information. However, when a contract has been transferred to the Defense Contract Management Agency (DCMA) for administration, request the information from the DCMA.
- (ii) Notify the Labor Advisor.
- (iii) Request approval through the Labor Advisor.
- (iv) Army personnel cannot give information about work stoppages or labor disputes to representatives of labor or management without authorization from the Labor Advisor.

5122.101-3 -- Reporting labor disputes.

- (2) Contact the Labor Advisor before disseminating any information on labor disputes.

5122.103 -- Overtime.

5122.103-4 -- Approvals.

(a) The following are designated to approve overtime:

- (i) Contracting officer
- (ii) Chief of Contracting Office
- (iii) HCAs.
- (ii) Deputies to HCAs.
- (iii) PARCs.
- (iv) Project managers.
- (v) Other individuals specifically designated from time to time by the DASA(P), Office of the ASA(AL&T).

Subpart 5122.3 -- Contract Work Hours and Safety Standards Act

5122.302 -- Liquidated Damages and Overtime Pay.

(c) The designee of the head of the agency is the Chief of Engineers for Corps of Engineers contracts only and the Labor Advisor for all other contracts.

Subpart 5122.4 -- Labor Standards for Contracts Involving Construction

5122.406 -- Administration and Enforcement.

5122.406-8 – Investigations.

(d) The contracting officer's report must be sent to the Office of the Judge Advocate General, Contract Law Division, Attn.: Labor Advisor, The Pentagon, Washington, D.C.

5122.406-9 -- Withholding from or suspension of contract payments.

(c) Disposition of contract payments withheld or suspended.

- (4) Liquidated damages. See 5122.302(c).

Subpart 5122.10 -- Service Contract Act of 1965, as Amended

5122.1008 -- Procedures for Preparing and Submitting Notice (SF 98/98a).

5122.1008-2 -- Preparation of SF 98a.

(b)

- (3) The Labor Advisor will notify contracting offices when a new edition of the Directory is available.

AFARS -- Part 23

Environment, Conservation, Occupational Safety, and Drug-Free Workplace

Subpart 5123.3 -- Hazardous Material Identification and Material Safety Data

5123.302 -- Policy.

- (a) See AR 700-141 for instructions for obtaining and processing Material Safety Data Sheets (MSDS).
- (b) The contracting officer shall provide hazard warning labels and MSDS to the safety office in accordance with AR 700-141.

AFARS -- Part 5124

Protection of Privacy and Freedom of Information

Subpart 5124.2 -- Freedom of Information Act

5124.203 -- Policy.

(a) Contracting officers must follow instructions in AR 25-55 for the release of acquisition information.

(b)

(i) If the contracting officer concludes that some or all information requested should be denied, he/she must prepare the proposed response in accordance with AR 25-55. The letter must conclude wording substantially as follows:

“You may appeal, in whole or part, this denial to the Secretary of the Army. In the event you decide to appeal, your letter of appeal should be sent within 60 days of the date of this denial letter through (*HCA address*) to: Freedom of Information Act Appeal, Attn: SAGC, General Counsel, 104 Army Pentagon, Washington DC 20310-0104. This denial is made on behalf of the Initial Denial Authority, (*name*), the Assistant Secretary of the Army (ALT) by (*name and rank*), Head of the Contracting Activity (*office*). (*Substitute PARC for HCA if the PARC is the HCA’s designee.*)”

Include copies of the records recommended for denial. Contracting officers in the AMC and the USACE must then follow the procedures specified by their headquarters. Contracting officers in all other contracting activities must send the proposed response to the HCA or designee. The authority granted to the ASA(ALT) to act on requests for procurement records under the Freedom of Information Act, except those under the purview of the Chief of Engineers and the Commander, AMC, is redelegated to the Director for Contracting and further redelegated to the HCAs. The HCAs may redelegate this authority only to the PARCs.

(ii) After coordination with counsel, the HCA or designee must release the proposed response, modified as necessary.

(iii) Within three working days of receipt of appeals, HCAs must send the documents required by AR 25-55 to the address in 5124.203(b)(i).

AFARS -- Part 5125

Foreign Acquisition

5125.000 -- Waivers.

All approvals, exceptions, and waivers from the requirements of FAR Part 25 or DFARS Part 225 must be documented in a Determination and Findings (D&F). An example is shown in 5153.9003. See also 5101.707.

Subpart 5125.2 -- Buy American Act -- Construction Materials

5125.202 -- Exceptions.

(a)

(i) The ASA(ALT) has delegated to the DASA(P) and the HCA, U.S. Army Corps of Engineers (USACE), authority to determine that the use of a particular domestic construction material is impracticable.

(2) The ASA(ALT) has delegated to the DASA(P) and the HCA, USACE, authority to make agency head determinations that the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The delegation to the HCA, USACE, is non-delegable.

5125.203 -- Evaluating Offers.

(a) The ASA(ALT) has delegated to the DASA(P) and the HCA, USACE, authority to determine that the cost of domestic construction materials is unreasonable.

Subpart 5125.3 -- Balance of Payments Program

5125.302 -- Policy.

(c) See DA PAM 25-30, AR 415-15, and AR 420-10 for projects for construction, repair, and maintenance of real property outside the United States.

Subpart 5125.6 -- Customs and Duties

5125.604 -- Exempted Supplies.

(b) The contracting officer must execute duty-free entry certificates and execute them when no administrative contracting officer has been assigned.

Subpart 5125.8 – Other International Agreements and Coordination

5125.871 -- North Atlantic Treaty Organization (NATO) Cooperative Projects.

5125.871-7 -- Congressional Notification.

(a) Send the notification at least 30 days prior to award directly to the Deputy Under Secretary of the Army (International Affairs), Attn.: SAUS-IA-DSC, 1777 N. Kent St., Arlington, VA 22209

(b) See 5125.871-7(a).

5125.890 -- Disclosure of Information and Visits and Accreditation of Foreign Representatives.

(a) All visits by foreign representatives to organizations, agencies, activities, installations, and facilities over which the Army exercises administrative control or security cognizance and to commercial firms performing work under contract to the Army must be cleared in accordance with DoD 5220.22-R and AR 380-10.

(b) AR 380-10 prescribes procedures for accreditation of foreign personnel. See AR 70-66 for release of classified military information to foreign representatives. Classified military information that may not otherwise be released may be released if the release is approved in writing by the Deputy Chief of Staff for Intelligence, Department of the Army.

Subpart 5125.70 -- Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisitions

5125.7002 -- Restrictions on Food, Clothing, Fabrics, and Specialty Metals and hand measuring tools.

5125.7002-2 -- Exceptions.

(a) *All determinations require approval by the Secretary of the Army. See AFARS 5153.9003 for a Sample Memorandum for Waiver of the Berry Amendment. The authority to make determinations may not be redelegated. Prior to making any determination to waive the requirements of the Berry Amendment, a certification in writing, with specificity, regarding alternatives in lieu of a Secretary of the Army determination to waive the restrictions of the Berry Amendment (10 U.S.C. 2241, note) must be done by the requiring activity.*

**AFARS PART 5126—OTHER SOCIOECONOMIC
PROGRAMS**

RESERVED

AFARS -- Part 27

Patents, Data, and Copyrights

Subpart 5127.2 -- Patents

5127.203 -- Patent Indemnification of Government by Contractor.

5127.203-6 -- Clause for Government waiver of indemnity.

Approval to exempt specific United States patents from the patent indemnity clause must be obtained from the Chief, Intellectual Property Law Division, Office of the Judge Advocate General, Department of the Army, Attn DAJA-IP, 901 N. Stuart Street, Arlington, VA 22203-1837. However, except that approval may be given by the Commander, U.S. Army Materiel Command (AMC) and designees having Patent Counsel.

5127.205 -- Adjustment of Royalties.

(a) The office having cognizance of patent matters must report the results of any action taken in compliance with FAR 27.205 to the Chief, Intellectual Property Law Division, OTJAG.

Subpart 5127.3 -- Patent Rights Under Government Contracts

5127.303 -- Contract Clauses.

(d)

(2) Send required documentation within 20 calendar days after award.

5127.304 -- Procedures.

Refer questions about Army procedures to the Chief, Intellectual Property Law Division at the address in 5127.203-6.

Subpart 5127.6 -- Foreign License and Technical Assistance Agreements

5127.675 -- Foreign License and Technical Assistance Agreements Between a Domestic Concern and a Foreign Government or Concern.

5127.675-2 -- Review of Agreements.

(a) Proposed agreements must be sent through the HCA for review by appropriate patent and technical personnel. The comments and recommendations of the HCA must be sent to the addressee in 5101.290(b)(11).

Subpart 5127.70 -- Infringement Claims, Licenses, and Assignments

5127.7004 -- Requirements for Filing an Administrative Claim for Patent Infringement.

(c) Forward all communications which

(1) claim that the manufacture, use, or disposition of any article, material or process by or for any agency or component of the Army involves the use of any invention, whether patented or un-patented, and

(2) make a claim for compensation, to the HCA which ordered the manufacture, use or disposition of the article, material or process (except in AMC, forward them to the Commander, AMC). The HCA and Commander, AMC, shall process the matter in accordance with DFARS Subpart 227.70, AFARS Subpart 27.70 and AR 27-60.

5127.7006 -- Investigation and Administrative Disposition of Claims.

(i) The office that has been granted clearance to investigate a claim may settle that claim in accordance with DFARS 227.7006, AFARS 5127.7006 and AR 27-601 by executing a patent release and settlement agreement, license agreement or assignment.

(ii) *Fiscal procedures.*

(A) An agreement to pay a fixed amount for any release and settlement agreement, license agreement or assignment, either by a lump-sum payment or an amount determinable at the time of contract execution, is subject to the provision that the fixed amount to be paid may not exceed the funds available for the purpose. Prior to incurring any obligation, officials charged with making such agreements shall submit the proposed agreements to the cognizant finance and accounting officer for verification of the availability of funds. The following statement shall be included on the face of the agreement:

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following allotments; and available balances are sufficient to cover the cost of the supplies and services.

(B) An agreement to pay running royalties on future acquisitions is not subject to the requirement for the statement contained in (A).

(C) Questions on fiscal procedures related to patent matters may be referred to the Intellectual Property Law Division, OTJAG. (See 5127.203-6 for address.)

(iii) ***Delegations of authority and approval requirements.***

(A) Under Section 606(b) of the Foreign Assistance Act of 1961 (75 Stat. 440, 22 U.S.C. 2356(b)) and DoDD 2000.3, authority to enter into agreements with claimants in full settlement and compromise of any claim against the U.S. under Section 606(a) of the Foreign Assistance Act of 1961, subject to the requirements of DFARS Subpart 227.70 and AFARS Subpart 27.70 and other rules and regulations published by higher headquarters, is delegated to the Commander, AMC; and the Chief of Engineers. This authority may not be redelegated, except that the Commander, AMC, may redelegate to the Commanders of major subordinate commands only.

(B)

(1) Approval by the Judge Advocate General or designee is required for all agreements authorized by the Foreign Assistance Act of 1961 (22 U.S.C. 2356), the Invention Secrecy Act (35 U.S.C. 181-188) or 10 U.S.C. 2386 when the agreement --

- (i) Provides for total payment by the Government, including reasonable anticipated royalties, of \$500,000 or more;
- (ii) Includes a license to different Government agencies on different terms;
- (iii) Provides for compensation for damages other than for infringement of patents or copyrights, e.g., claims under the Foreign Assistance Act or the Invention Secrecy Act;
- (iv) Contains a release or license which may operate to release a contractor from an obligation to indemnify the Government;
- (v) Is in settlement of patent or copyright infringement liability for the use of foreign patents or copyrights;
- (vi) Is with a government or national representative of a government within the scope of a Foreign Assistance Program; or
- (vii) Requires the signature of, or concurrence on behalf of, another agency of the Government.

(2) When approval of an agreement is required, the office requesting approval shall submit the number of executed agreements with original signatures that is required to be approved to the Chief, Intellectual Property Law Division, OTJAG. (See 5127.203-6 for address.) The agreement shall be accompanied by a memorandum of facts signed by an authorized official of the office requesting approval.

(3) Upon approval of the agreement by the Judge Advocate General or designee, one executed and approved copy of the agreement shall be forwarded directly to the United States Patent Office to be recorded. The remaining executed and approved copies shall be returned to the office that requested approval, for distribution.

(iv) ***Distribution of agreements.***

(A) An executed and approved agreement with original signatures shall be retained by each contracting party and each office processing the request for approval.

(B) A copy of each license which provides for the payment of a running royalty shall be forwarded by the office requesting approval to each interested HCA. Receipt of a copy of the license shall constitute notice that further procurement of the licensed subject matter requires the payment of royalties to the licensor. When necessary, the HCA shall notify the contracting offices affected.

5127.7011 -- Procurement of Rights in Inventions, Patents, and Copyrights.

(1) Subject to the limitations in DFARS Subpart 227.70 and AFARS Subpart 5127.70, the following, and their designees, are authorized to acquire the items and rights described in 10 U.S.C. 2386 and to enter into agreements in settlement of resulting claims:

- (i) The Commander, AMC.
- (ii) The Chief of Engineers.
- (iii) The Surgeon General.
- (iv) The Commander, U.S. Army Space and Strategic Defense Command.

Other contracting activities must obtain written approval of any proposed agreement from the addressee at 5101.290(b)(1) through the Chief, Intellectual Property Law Division, OTJAG, (see 5127.203-6 for address), except for agreements for acquisition of the right to reproduce copyrighted material when acquisition cost is \$2,500 or less.

(2) Send all communications relating to proposed patent licenses or assignment to the chief patent counsel or legal officer supporting the contracting office as soon as they are received.

(3) To assist national defense, various patent owners voluntarily grant royalty-free licenses, assignments and releases to the Government to use the inventions covered by their patents and applications for patents. Obtain a recommended, standardized format for such a grant from the Chief, Intellectual Property Law Division, OTJAG.

AFARS -- Part 5128

Bonds and Insurance

Subpart 5128.1 -- Bonds

5128.106 -- Administration.

5128.106-90 -- Review of Bonds and Consents of Surety.

All bonds and consents of surety must be reviewed by the legal counsel..

Subpart 5128.2 -- Sureties and other security for bonds

5128.202 -- Acceptability of Corporate Sureties.

(c) The Department of the Treasury provides an electronic bulletin board service for Treasury Circular 570 and updates. The telephone number for the bulletin board is FTS (202) 287-1295. Distribution of the information to contracting activities and offices of the staff judge advocates that cannot access the bulletin board shall be in accordance with HCA instructions. New bonds obtained as required by the FAR shall be promptly forwarded for review in accordance with 5128.106-90.

5128.203 -- Acceptability of Individual Sureties.

(f) Refer evidence to the local Procurement Fraud Advisor. See AR 27-40.

5128.203-7 -- Exclusion of Individual Sureties.

(d) Send the D&F justifying acceptance to the HCA. If the HCA concurs, the request and concurrence must be then sent through the addressee in 5101.290(b)(9) to the debarring official for a determination.

5128.204 -- Options in Lieu of Sureties.

5128.204-1 -- United States Bonds or Notes.

When a contractor furnishes security in lieu of corporate or individual sureties on bonds, the contracting officer must send a certified copy of the receipt for the deposited security and a certified copy of any required power of attorney and agreement to legal counsel along with the bond.

Subpart 5128.3 -- Insurance

5128.301 -- Policy.

(b) Contracting officers responsible for contract administration on contracts retained by the Army are designated as the point of contact for each arrangement.

5128.307 -- Insurance Under Cost-Reimbursement Contracts.

5128.307-1 -- Group Insurance Plans.

(a) *Prior approval requirement.*

Group insurance plans under cost-reimbursement contracts administered by the Army must be submitted for approval to the contracting officer.

5128.311 -- Solicitation Provision and Contract Clause on Liability Insurance Under Cost-Reimbursement Contracts.

5128.311-2 -- Contract Clause.

When required by paragraph (g) of the clause at FAR 52.228-7, Insurance -- Liability to Third Persons, the contracting officer must notify the Chief, Torts Branch, Army Litigation Center, Office of The Judge Advocate General, Headquarters, Department of The Army, Attn DAJA-LTT, 901 North Stuart Street, Suite 400, Arlington, VA 22203-1837, by phone at (703) 696-1620 or DSN 226-1620. When the pertinent papers are received from the contractor, they shall be forwarded to the Chief, Torts Branch, at the address given, with a request to inform the Director, Torts Branch, Civil Division, Department of Justice.

AFARS -- Part 29

Taxes

Subpart 5129.1 -- General

5129.101 -- Resolving Tax Problems.

(a) Tax problems sent must describe in a comprehensive statement of facts and issues and supported by --

- (i) Copies of correspondence and documents needed to understand the problem;
- (ii) A copy of the contract or relevant portion; and
- (iii) The comments and recommendations of the contracting officer and the reviewer at each echelon of command through which the correspondence passes.

Subpart 5129.2 -- Federal Excise Taxes

5129.201 -- General.

(b) The authority to sign applications to the Bureau of Alcohol, Tobacco, and Firearms for permits to procure alcohol free of tax (ATF Form 1444) and specially denatured alcohol (ATF Form 1486) is delegated to the Commander, AMC; The Surgeon General; and the Commander, U.S. Army Medical Command, with power of redelegation to their PARCs. The authority to sign these applications is also delegated to the Chief of Engineers. When authority is redelegated, the individual redelegating that authority shall furnish the Bureau of Alcohol, Tobacco, and Firearms, Distilled Spirits and Tobacco Branch, Room 5000, 650 Massachusetts Avenue NW, Washington DC 20226, in writing, the name of the delegee.

**AFARS PART 5130—COST ACCOUNTING STANDARDS
ADMINISTRATION**

RESERVED

**AFARS PART 5131—CONTRACT COST PRINCIPLES AND
PROCEDURES**

RESERVED

AFARS -- Part 5132

Contract Financing

5132.006 -- Reduction or Suspension of Contract Payments upon Finding of Fraud.

5132.006-1 -- General.

(c) The Secretary of the Army has delegated authority to the ASA(ALT) to reduce or suspend contract payments to contractors when there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud.

5132.006-2 -- Definitions.

The Army's Remedy Coordination Official is the Chief, Procurement Fraud Division (PFD), OTJAG; Telephone (703) 696-1550; FAX (703) 696-1559. See 5101.290(b)(10).

5132.006-3 -- Responsibilities.

(b) Report suspected fraud related to advance, partial, or progress payments to the local Procurement Fraud Advisor (PFA), who will coordinate the matter as prescribed in AR 27-40.

Subpart 5132.1 -- Non-Commercial Item Purchase Financing

5132.108 -- Financial Consultation.

(1)

(i) The Army contract financing office is the addressee in 5101.290(b)(8).

5132.111 -- Contract Clauses.

See DFARS Subpart 232.9, Prompt Payment.

Subpart 5132.4 -- Advance Payments for Non-Commercial Items

5132.402 -- General.

(e)

(1) The Assistant Secretary of the Army (Financial Management) (ASA(FM)) is authorized to make advance payments and determinations pursuant to 10 U.S.C. 2307.

- (2) The Office of the ASA(FM) will coordinate with the activity that provides contract financing support.

Subpart 5132.5 -- Progress Payments Based on Costs

5132.501 -- General.

32.501-2 -- Unusual progress payments.

(a)

- (2) Requests for approval of unusual progress payments must include the following documentation submitted by the contractor:

- (A) Monthly cash flow forecasts for the period which include the additional financing.
- (B) Estimated Profit and Loss statements and Balance Sheets for the same period as the cash flow forecast.
- (C) The most recent, audited financial statements.
- (D) A description of significant events before or after preparation of financial statements which materially affect the financial condition of the company, the operating statement or the cash flow statement.

Subpart 5132.6 -- Contract Debts

5132.606 -- Debt Determination and Collection.

(c) Case files sent to the contract financing office must be sent within 15 calendar days after the end of the 30-day period following the contracting officer's demand for payment. Send these case files to the Director, Defense Finance and Accounting Service-Columbus Center, Attn: FAS-C0-FPD, P.O. Box 182317, Columbus, Ohio 43218-2317.

- (i) In addition to information required by FAR 32.606, the case file must include a copy of the demand made by the contracting officer; a statement as to whether or not the contract contains an Interest clause; and, if so, a copy of the clause or a reference to the clause number.
- (ii) If the debt represents excess costs incurred in purchasing supplies or services against the account of a defaulted contractor, the case file shall include -

-

- (A) The name and address of the replacement contractor;
- (B) The disbursing office voucher number;
- (C) The date paid;
- (D) Bills of lading numbers, if any;

- (E) The name of the carrier, when applicable; and
- (F) The name and symbol number of the disbursing officer.

(i) If the debt represents liquidated damages, the case file shall include an explanation of the basis for assessing liquidated damages.

Other Guidance: See DFAS-IN 37-1, dated Jan 00.

5132.671 -- Bankruptcy Reporting.

Send information required by DFAS-IN 37-1 to the addressee in 5132.606(c).

Subpart 5132.8 -- Assignment of Claims

5132.803 -- Policies.

(d) An HCA or PARC may authorize exclusion of Alternate I to the clause at FAR 52.232-23 when it is in the Government's interest.

AFARS -- Part 5133

Protests, Disputes, and Appeals

Subpart 5133.1 -- Protests

5133.102 -- General

(b)

(i) The HCA may make agency head determinations regarding actions described in FAR 33.102(b)(1) and (b)(2). The HCA may redelegate no lower than the PARC, the Chief of the supporting legal office, or the official designated as the independent review authority in accordance with FAR 33.103(d)(4).

(ii) Actions taken must be consistent with 10 U.S.C.2305(f), 31 U.S.C.3554, and FAR Part 33.

(iii) For award of costs, contracting officers must attempt to reach an agreement on the amounts to be paid to a protester or an interested party. If no agreement can be reached, persons exercising authority as cited in (i) above may, at the request of the protester or an interested party, make the final agency determination of the amount the contracting officer will pay.

(iv) Officials must consult legal counsel in exercising this authority.

5133.103 -- Protests to the Agency.

(d)

(3) As soon as practicable , the contracting officer must consult with the legal office concerning the protest. Protests received at a level higher than the contracting office must be referred to the contracting office for resolution. Concurrent with this referral, the office that initially received the protest must inform the protester, identifying the contracting office that will handle the protest and giving the point of contact within that office.

(4) Protests requesting an independent review at a level above the contracting officer will be handled as follows:

- (i) For contracting officers under the jurisdiction of HQ, AMC, in accordance with procedures established by the Commander, AMC.
- (ii) For contracting officers under the jurisdiction of the Corps of Engineers, in accordance with the procedures established by the Chief of Engineers.
- (iii) For all other contracting activities, in accordance with procedures established by the HCA. If the independent review will be conducted within contracting channels, the HCA will appoint a review authority at least at the level of Director of Contracting. The HCA may also appoint individuals assigned outside contracting channels as a review authority (e.g. attorneys, chief of staff, installation commanders).

5133.103-90 -- Annual Agency Bid Protest Report.

HCA's must prepare an annual report of agency bid protests and send it to the addressee in 5101.290(b)(3) not later than 30 calendar days following the end of the fiscal year. The analysis must include:

- (a) the number of protests received during the reporting period, to include their disposition;
- (b) an assessment of the causes of the most frequently recurring issues, including a description of all corrective actions taken to include the award of protest costs;
- (c) the distribution of protests by subordinate contracting offices; and
- (d) any additional information considered necessary to a full understanding of the efficiency and effectiveness of the activity's agency protest procedures.

5133.104 -- Protests to GAO.

(a) *General procedures.* The contracting officer must take the action required of the "agency" in FAR 33.104.

(4)(iii)

(1) Contracting offices must use the following reporting procedures, except that the PARC may require the report to be sent through the PARC's office:

(i) Contracting offices reporting to AMC must send the report directly to the addressee in 5101.290(b)(12).

(ii) Contracting offices reporting to the U.S. Army Corps of Engineers (USACE) must send the report directly to the addressee in 5101.290(b)(13).

(iii) All other Army contracting offices must send the report via courier or express mail service to the Office of The Chief Trial Attorney, Attn: DAJA-CA, 901 N. Stuart Street, Suite 500, Arlington, VA 22203-1837.

(iv) The report must be sent not later than 20 days after the GAO notifies the agency by telephone that a protest has been filed. If the GAO decides to use the express option and the contracting officer concludes that the report cannot be furnished in time, he/she must notify the appropriate office in (i)-(iii) at once so that it may request an extension from GAO.

(2) Before forwarding the report to the GAO Comptroller General, the addressees in (1)(i)-(iii) must review the report and recommend any changes required to ensure that the report is accurate, complete, and legally sufficient.

(b) Protests before award.

(1)

(A) When it is necessary to request authorization to award a contract notwithstanding a protest, the contracting officer must prepare a D&F to be signed by the HCA. The D&F must clearly explain the damage the United States will suffer if award is not authorized and the damages the United States will suffer if the award is made and the protest is sustained.. However, no award can be made or selection announced prior to approval by the DASA(P), except for contracting offices reporting to AMC, when the approval may be granted by the Command Counsel, AMC. The contracting officer must also prepare a request for approval that identifies all protest issues and addresses the merits and expected resolution of the protest. Include details of any Congressional interest in the protest. After legal review, forward the request with the D&F to the HCA.

(B) Within three days after the contracting office is notified of the protest, the HCA will endorse the request for approval and electronically transmit the request and the D&F to the appropriate office in (a)(4)(i)(1)(i)-(iii). That office shall immediately distribute the request and the D&F to the addressee in 5101.290(b)(1) and to Department of the Army, Attn: SAGC, General Counsel, 104 Army Pentagon, Washington DC 20310-0104.

(c) Protests after award.

(2) Process the finding as required at (b), Protests before award. The D&F must explain the damage the United States will suffer if continuing performance is not authorized and the damages the United States will suffer if continuing performance is authorized and the protest is sustained. Continuing performance cannot be authorized prior to approval by the DASA(P), except for contracting

offices reporting to AMC, when the approval may be granted by the Command Counsel, AMC. Process the request for approval as required in (b).

(g) *Notice to GAO*. Send the report to the addressee in 5101.290(b)(1) not later than 45 days after receipt of the recommendations.

5133.105 -- Deleted

5133.190 -- Reporting and Analysis of Bid Protests.

5133.190-1 -- Bid Protest Action Report.

Within 15 calendar days following notification of resolution of a GAO protest, the contracting officer must send a bid protest action report in the format in 5153.9006 (double spaced between item numbers) to the following addressees:

- (a) AMC contracting activities: Addressee in 5101.290(b)(12).
- (b) USACE contracting activities: Addressee in 5101.290(b)(11).
- (c) All other contracting activities: Addressee in 5133.104(a)(4)(i)(1)(iii).

5133.190-2 -- Quarterly Bid Protest Analysis Report.

(a) AMC, USACE and the Office of the Chief Trial Attorney must prepare a quarterly bid protest analysis report for GAO protests in the format in 5153.9007 (double space between item numbers) and send it with the bid protest action reports to the addressee in 5101.290(b)(5), not later than 30 calendar days following the end of the quarter. The analysis will also include an assessment of the causes of the most frequently recurring issues and recommendations for appropriate corrective action. Reconcile the numbers submitted with the most current data available from the GAO.

(c) The ODASA(P), Information Management & Assessment Division, will prepare a consolidated report quarterly not later than 45 calendar days following the end of each quarter.

Subpart 5133.2 -- Disputes and Appeals

5133.212 -- Contracting Officer's Duties Upon Appeal.

5133.212-90 -- Appeal Procedures.

(a) For purposes of this section and DFARS Appendix A, the duties and responsibilities of the Chief Trial Attorney are performed by the Army Chief Trial Attorney or the Engineer Chief Trial Attorney as follows:

- (i) The Army Chief Trial Attorney, as appointed by the Judge Advocate General, is the authorized representative of the Secretary of the Army with sole

authority and responsibility for the conduct and control of litigation of contract disputes for all department of the Army cases docketed with the ASBCA, except for Corps of Engineer cases described in (ii) and (iii);

(ii) The Engineer Chief Trial Attorney, as appointed by the Chief Counsel, Corps of Engineers, is the authorized representative of the Secretary of the Army and has sole authority and responsibility for the conduct and control of litigation of contract disputes for all Corps of Engineers cases docketed with the ASBCA of a value of less than \$3 million;

(iii) The Assistant Judge Advocate General for Civil Law may determine, on a case by case basis, to delegate Corps of Engineer cases of a value of \$3 million or more to the Engineer Chief Trial Attorney.

(b) All contract disputes addressed in this section remain subject to the litigation oversight authority and responsibility delegated to the General Counsel of the Department of the Army.

(c) See DFARS Appendix A for the Armed Services Board of Contract Appeals (ASBCA) charter and rules.

5133.212-90-1 -- Notice of an Appeal.

Contracting officers must concurrently --

(a) Send to the Chairman, ASBCA, 5109 Leesburg Pike, Suite 703, Falls Church VA 22041-3208, any notice of an appeal received directly and include the envelope showing the postmark when the notice of appeal is received by mail; and

(b) When the Defense Contract Management Agency (DCMA) staff has participated in contract award and/or administration, send to the DCMA office involved a notice of the appeal, with direction to preserve all documents pertaining to the contract.

5133.212-90-2 -- ASBCA Appeal File.

See DFARS Appendix A, Part 2, Preliminary Procedures, Rule 4, for the contents of the appeal file to be forwarded to the ASBCA.

5133.212-90-3 -- Comprehensive Report to the Chief Trial Attorney.

(a) Concurrent with forwarding the appeal file to the ASBCA, the contracting officer must send the following documents to the addressee in 5133.104(a)(4)(i)(1)(ii) or (iii) as applicable with a copy to the reviewing official designated in accordance with 5133.212-90-4:

(1) A copy of the appeal file.

(2) A trial attorney's litigation file (exempt report, paragraph 5-2e(4) of AR 335-15) which shall include the information listed in (i) through (v). This report shall not be provided to the ASBCA or the contractor.

(i) The names, current addresses and telephone numbers of all potential witnesses (including the contractor's) having information concerning the facts in dispute.

(ii) A signed statement of each Government witness itemizing personal knowledge of the facts the witness will testify to under oath at hearing (or a summary if it is impossible to obtain a signed statement). Include the following:

(A) Background and circumstances surrounding the generation of pertinent documents.

(B) Explanation, basis and/or rationale of those portions of the available documents which will require clarification at the hearing.

(C) Listing of any facts and events not shown by available documents.

(D) Identification of any other persons having personal knowledge of pertinent facts.

(E) A statement regarding the expected availability of the witness for the hearing.

(iii) An analysis for the Chief Trial Attorney discussing the contractor's individual allegations and overall position with an opinion of the validity of each, and an appraisal of the strengths and weaknesses apparent in both parties' positions.

(iv) A memorandum by the legal advisor or the official making the decision (with input from legal counsel), setting forth an analysis of the legal issues involved in the dispute, including comments about the adequacy of the findings of fact and the legal sufficiency of the decision.

(v) The advisory report, if any, of the Contract Settlement Review Board.

(b) The contracting officer must send to the Chief Trial Attorney a copy of all correspondence and other data pertinent to the dispute received after the trial attorney's litigation file has been submitted. Also forward copies to the reviewing official.

(c) Upon discovery of new facts or circumstances, the Chief Trial Attorney is authorized, in appropriate cases, to have the reviewing official reconsider the matter.

5133.212-90-4 -- Review of Appeal.

(a) The HCA shall --

- (1) Furnish technical and legal assistance to the contracting officer as required; and
- (2) Establish procedures to ensure that all appeals filed under the disputes clause are reviewed at a level higher than the contracting officer.

(b) The reviewing official designated by the HCA shall --

- (1) Ensure that the findings cover all issues in dispute and are consistent with the decision from which the appeal is taken;
- (2) Ensure that the contracting officer's comprehensive report to the Chief Trial Attorney, including the evidence submitted in support of the contracting officer's decision, is complete;
- (3) Within 10 calendar days after receiving the contracting officer's comprehensive report, forward to the Chief Trial Attorney --
 - (i) Evaluations, conclusions and recommendations;
 - (ii) Any additional evidence considered essential to enable the Chief Trial Attorney to protect the interests of the Government before the ASBCA; and
 - (iii) If the reviewing official decides that the contracting officer's decision is not sufficiently supported by available and competent evidence or is erroneous, an estimated date by which either additional support will be furnished or the decision will be withdrawn; and
- (4) Assist the Chief Trial Attorney in obtaining additional evidence or in making other necessary preparations for presenting the Government's position before the ASBCA.

5133.212-90-5 -- Receipt of Complaint.

(a) If the contracting officer receives the complaint (DFARS Appendix A, Part 2, Preliminary Procedures, Rule 6) subsequent to forwarding the comprehensive report to the Chief Trial Attorney, he/she must within 15 calendar days after receipt of the complaint, send directly to the Chief Trial Attorney supplementary information covering any issues raised by the complaint which were not sufficiently covered in the comprehensive report. Include specific admissions or denials of each allegation of fact contained in the complaint and a statement of any affirmative defenses or counterclaims applicable.

(b) Provide copies of the supplementary information furnished the Chief Trial Attorney to the reviewing official.

5133.212-90-6 -- Litigation.

The Chief Trial Attorney is delegated sole authority and responsibility for the conduct and control of litigation of contract disputes docketed with the ASBCA.

- (a) The Chief Trial Attorney will present all Army cases to the ASBCA, using trial attorneys assigned to the office, except that --
 - (1) The Chief Trial Attorney may authorize attorneys designated by an HCA to act as trial attorneys or to assist in the presentation of Army cases; or
 - (2) When it is determined by the HCA that an appeal before the ASBCA has particular significance to the contracting activity and that it involves difficult operational issues and technical facts, subsequent to the filing of the contracting officer's comprehensive report and after consultation with the Chief Trial Attorney, the HCA may detail an attorney from the contracting activity to assist the Chief Trial Attorney.
- (b) Local legal counsel and, when their expertise is required, any other person in the contracting activity must assist and support the Office of the Chief Trial Attorney in preparing the case.
- (c) The Chief Trial Attorney and the attorneys assigned are authorized to communicate directly with any person or organization to secure any witnesses, documents, or information considered necessary in connection with representing the Government in matters before the ASBCA. The contracting officer must be informed of any actions taken in connection with these matters.

5133.212-90-7 -- Disposition.

- (a) The authority and responsibility to settle contract disputes docketed with the ASBCA remains with the contracting officer, subject to (b) and the following:
 - (1) The contracting officer must advise the Chief Trial Attorney of all offers of settlement from a contractor, whether made by the contractor or through the contractor's attorney.
 - (2) The contracting officer must consult with the Chief Trial Attorney before accepting a contractor's offer of settlement and before making a settlement offer to the contractor.
- (b) The Chief Trial Attorney has all necessary authority to conclude settlement agreements with the concurrence of the contracting officer, the reviewing official, or the DASA(P). He/she must notify the appropriate MACOM legal office/SJA of any disagreement regarding the settlement of a case before raising the matter to the ASA(AL&T).

(1) An agreement on matters for which there is no substantial controversy and which will not have the effect of disposing of an appeal may be entered into by the Chief Trial Attorney or by an individual trial attorney; provided that, in the case of a pre-hearing written stipulation or agreement, authority shall have been granted the individual trial attorney in advance by the Chief Trial Attorney.

(2) In appropriate cases, such as those where time-consuming delays would occur by returning the appeal to the contracting officer, the Chief Trial Attorney (or an individual trial attorney acting with the prior approval of the Chief Trial Attorney) may enter into an agreement with an appellant which will have the effect of disposing of an appeal after concurrence has been obtained from a representative of the HCA. Such agreement may then become the basis of an ASBCA decision disposing of the appeal.

5133.212-90-8 -- Review of ASBCA Decisions.

(a) *Contracting activity review.*

(1) The contracting activity must review ASBCA decisions and, if the HCA thinks that a decision should be reconsidered by the ASBCA or appealed to the U.S. Court of Appeals for the Federal Circuit, the HCA may within 10 calendar days after receipt of the decision, request the Chief Trial Attorney to either --

(i) File a motion for reconsideration, stating the grounds relied upon to sustain the motion; or

(ii) Initiate action seeking an appeal to the U.S. Court of Appeals for the Federal Circuit, stating the basis for such an appeal pursuant to the review standards of section 10(b) of the Contract Disputes Act of 1978, as amended.

(2) If the Chief Trial Attorney does not concur with a request of the HCA within five calendar days, the Chief Trial Attorney shall forward the request, together with reasons for opposition, through the Judge Advocate General to the addressee in 5101.290(b)(1) for the decision in coordination with the General Counsel of the Army. If it is determined that a motion for reconsideration will not be made or that an appeal will not be taken to the U.S. Court of Appeals for the Federal Circuit, the Chief Trial Attorney may certify this fact to the ASBCA.

(3) When it appears that an adverse decision of the ASBCA has resulted from flaws in the regulations that implement DoD policy rather than an error by the ASBCA, recommendations for changes to acquisition regulations should be developed following the format in DFARS 201.201-1(d)(i) and submitted to the addressee in 5101.290(b)(2).

(b) *Chief Trial Attorney review.*

The Chief Trial Attorney independently reviews all ASBCA decisions involving Army contracts to determine whether any decision should be reconsidered by the ASBCA or appealed to the U.S. Court of Appeals for the Federal Circuit.

5133.212.90-9 Dispute Settlement & Judgments, Use of the Judgment Fund

(a) *Judgment Fund.* The Contract Disputes Act (CDA) provides that the Judgment Fund (“the Fund”) may be used to pay for adverse judgments against the Government. Settlement agreements in CDA cases before the Armed Services Board of Contract Appeals may be converted into consent judgments to access the Judgment Fund to pay for settlements under certain circumstances. Settlement in CDA cases before Federal Courts where the Army is represented by the Department of Justice may use DoJ’s independent authority to use the Judgment Fund for settlements, however, the policy set forth herein shall be followed by Army contracting activities. The Judgment Fund must be reimbursed with funds current as of the date of the judgment.

(b) *Fiscal Considerations in Settlements.* If funds appropriate to pay a settlement are expired but the account remains open, Contracting Officers must use expired funds to pay the settlement. If the account remains open but no expired funds remain, Contracting Officers must use the Judgment Fund to access current funds to pay the settlement. Access to the Fund requires a consent judgment from the Board or use of the Department of Justice’s independent authority to use the Fund. If accounts appropriate to pay a settlement are canceled/closed, Contracting Officers may use current funds to pay the settlement.

(c) *Settlement Procedures.* (1) The Army shall assign responsibility, within the Office of the Assistant Secretary of the Army (Financial Management) (ASA(FM)), for tracking available expired funds within the Service. The ASA(FM) shall insure that financial managers throughout the Service are aware of the requirements set forth herein and are prepared to expeditiously assist contracting officers to comply with these procedures.

(2) The following procedures for settlements shall be followed by the Army.

(i) In situations where contract funds have expired but the accounts have not closed, settlements shall be funded with expired funds if available. Contracting Officers will ascertain the availability of appropriate expired funds, through financial management channels, from the ASA(FM).

(ii) If the Assistant Secretary determines that no expired funds exist within the Army to fund the settlement and the accounts are not closed, the Contracting Officer must access the Judgment Fund through a consent judgment in order to use current year funds to pay the settlement (i.e., reimburse the Fund). The reimbursement POC is the ASA(FM) or his/her designee.

(iii) If no expired funds exist but the account remains open, the following procedure will be followed. If the contracting officer has current year funds available to reimburse the Fund, then he/she shall set aside the funds and may enter into a consent decree and allow the Fund to pay the judgment. The contracting officer will then coordinate with the Fund POC indicated on the FMS Forms (ASA(FM)) to accomplish reimbursement of the Fund. If the contracting officer does not have sufficient current funding to reimburse the Fund, he/she will contact the ASA(FM) for authorization prior to entering into a consent decree.

(iv) If the accounts are closed, the following procedure will be used. If the contracting officer has sufficient funds to pay the settlement, he/she will not use the Fund, and pay the settlement with Agency funds. If sufficient current funds are not available, the contracting officer must obtain approval from ASA(FM) to enter into a consent judgment to access the Fund.

(v) When use of the Judgment Fund is authorized, the contracting officer shall fill out the appropriate Certificate of Finality and Financial Management Service (FMS) forms (FMS Forms 195, 196, 197A and 198 (if appropriate)) and submit the payment request to the FMS. The "reimbursement contact" on FMS Form 196 shall be the ASA(FM) or his/her designee. Copies of the FMS forms sent to the FMS shall simultaneously be forwarded to the ASA(FM). The ASA(FM) shall insure prompt reimbursement by the Army to the Fund.

(d) *Judgments.* The following procedures shall be used to pay judgments using the Judgment Fund.

(i) The contracting officer shall ascertain the availability of current funds through financial management channels, if necessary through ASA(FM). If current funds are available, the contracting officer will not use the Fund, and will pay the judgment with Agency funds.

(ii) If current funds are not available, the contracting officer will pay the judgment using the Fund and notify the ASA(FM).

(e) *Settlement agreements.* All settlements converted to consent judgments and funded by the Judgment Fund shall be in writing and contain appropriate release language. The contracting officer, local attorney and trial attorney shall insure that all settlement amounts are fair and reasonable.

(f) *Expeditious handling.* Inquiries and approvals required by these procedures may be oral so long as they are documented by memorandum for record. Settlements are often time-sensitive and these procedures should be carried out expeditiously.

5133.213 -- Obligation to Continue Performance.

(a) The HCA must approve the determination to use the alternate paragraph in the clause at FAR 52.233-1.

**AFARS PART 34—MAJOR SYSTEM ACQUISITION
RESERVED**

AFARS -- Part 5135

Research and Development Contracting

5135.006 -- Contracting Methods and Contract Type.

(b)(i)(C)

- (1) Solicitations cannot be released prior to USD(AT&L) approval.

5135.014 -- Government Property and Title.

5135.014-90 -- Special requirements for research and development contracts.

(a) Prior to entering into a contract for research or development or both which provides for the acquisition or construction by, or furnishing to, the contractor of research, development, or test facilities and equipment, the Secretary of the Army must determine that the facilities and equipment are necessary for the performance of the contract (10 U.S.C. 2353). Authority to approve such requests has been delegated to the ASA(ALT). See 5101.707.

(b) Each request for Secretarial determination must be sent through to the addressee in 5101.290(b)(24) and contain:

- (1) A detailed description of the acquisition supporting a finding that the contract is for research or development or both.
- (2) The contract type and funds to be used.
- (3) Property or services to be acquired.
- (4) Name of potential contractor.
- (5) Any urgency considerations.
- (6) A description of the research, development or test facilities and associated equipment and specialized housing which are to be acquired or constructed by the contractor or furnished to the contractor by the Government. Include the estimated cost of the property to be provided by the contractor or the Government and the reasons this property is necessary for the performance of the contract.
- (7) When the Government will furnish property to the contractor, an explanation of how it will be provided, e.g., loan, lease, sale, or other. When

reimbursement will be sought under a lease or sale, provide the fair market value that will be charged to the contractor.

(8) Details concerning ownership of land on which the facilities or equipment are to be located, e.g., Government owned, private, etc.

(9) Details concerning whether the facilities to be installed or constructed are removable or separable without unreasonable expense or unreasonable loss of value.

(10) In the case of facilities that will be installed or constructed on property not owned by the United States, and that are not removable or separable without unreasonable expense or unreasonable loss of value, describe the provisions to be included in the contract for --

(i) Reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(ii) An option for the United States to acquire the underlying land; or

(iii) An alternative provision considered adequate to protect the interests of the United States in the facilities and an explanation of why it is adequate.

5135.070 -- Indemnification Against Unusually Hazardous Risks.

5135.070-1 -- Indemnification under research and development contracts.

(a) Send requests for authorization through contracting channels to the addressee in 5101.290(b)(3) in time to reach the addressee at least 30 working days prior to planned release of the solicitation.

(b) Each request for a Secretarial D&F must contain --

(i) The information required by FAR 50.403-2(a), except (a)(3);

(ii) Facts showing that the clause will be used in a contract for research or development or both;

(iii) A statement that the proposed indemnification clause complies fully with the requirements of 10 U.S.C. 2354; and

(iv) The reasons the use of the indemnification clause would be in the Government's interest.

See 5101.707.

(c) Requests for indemnification under Pub. L. 85-804 must be handled in accordance with FAR Subpart 50.4 and DFARS Subpart 250.4.

AFARS -- Part 5136

Construction and Architect-Engineer Contracts

Subpart 5136.2 -- Special Aspects of Contracting for Construction

5136.201 -- Evaluation of Contractor Performance.

(a)(1)

(90) For Job Order Contracts, the contracting officer must ensure evaluation of contractor performance for each order of \$100,000 or more.

(2) As a minimum, the report (DD Form 2626, Performance Evaluation (Construction)) must be prepared at the final acceptance of work. The COR, or ordering officer, if there is no COR, must be responsible for monitoring contract performance.

(b) The contracting officer is responsible for reviewing performance reports for accuracy and fairness, prior to their submission to the central data base.

(c)

(2) Before awarding a Job Order Contract, contracting officers must retrieve all performance evaluations in the Construction Contractor Appraisal Support System (CCASS) on those offerors in range for award. Contracting officers may rely solely on the CCASS database information in assessing past performance.

5136.209 -- Construction Contracts With Architect-Engineer Firms.

The HCA may approve award of a construction contract to the firm that designed the project. This authority may be redelegated to the PARC or, in the USACE, to the Division Engineer.

5136.271 -- Cost-Plus-Fixed-Fee Contracts.

(i) HCAs may approve the use of cost-plus-fixed-fee contracts for environmental work, unless the environmental work is classified as construction as defined by 10 U.S.C. 2801. This authority may be redelegated no lower than the chief of the contracting office.

- (ii) For proposed contracts subject to the requirements of DFARS 236.271, but not covered by the delegation of authority in (i), send the request for approval to the addressee in 5101.290(b)(4),

Subpart 5136.6 -- Architect-Engineer Services

5136.600-90 -- Authority for Architect-Engineer Contracting.

Only the USACE, the National Guard Bureau (for BCE-supported requirements), and, except for military construction and family housing projects, designated TRADOC installations are authorized to contract for architect-engineer (A-E) services. Other Army contracting activities, as mutually agreed with the USACE, may execute task orders for A-E services under USACE indefinite-delivery contracts. The installation contracting officer and facilities engineering personnel must comply with the instructions of the USACE contracting officer regarding the negotiation, issuance, and administration of task orders.

5136.601 -- Policy.

- (1) National Guard Bureau contracting officers must --

- (A) Use the information contained in the synopsis of the proposed contract action (FAR 5.207(b)); and

- (B) Send the notice to the addressee at 5101.290(b)(10), or by typed facsimile to DSN 227-6988/3840/3847 or (703) 697-6988/3840/3847 at least 23 calendar days before the initial obligation of funds.

- (2) The USACE must report in accordance with AR 415-15; contracting officers are not required to report.

5136.601-3-90 -- Applicable Contracting Procedures.

(a) Limitations on use of indefinite-delivery A-E contracts. Headquarters, USACE, and Headquarters, National Guard Bureau, must establish appropriate controls on the use of indefinite delivery contracts for architect-engineering services by subordinate contracting offices.

5136.602 -- Selection of Firms for Architect-Engineer Contracts.

5136.602-5 -- Short Selection Processes for Contracts Not to Exceed the Simplified Acquisition Threshold.

The USACE and the National Guard Bureau may use both short processes.

AFARS -- Part 5137

Service Contracting

Subpart 5137.1 -- Service Contracts – General

All solicitations for services must be performance based and fixed price (firm fixed price, fixed price with award fee, fixed price incentive, fixed price with economic price adjustment). One time deviations with adequate justification in writing may be granted by PARCs up to \$1 million (total contract value including all options), HCAs up to \$10 million, DASA (P) over \$10 million. Copies of all approved deviations are to be furnished to SAAL-PP.

5137.104 -- Personal Services Contracts.

(b)

(i) See 5137.104-90 for implementation.

(ii)(C)

(2) The U.S. Army Medical Command must approve requirements for services at DFARS 237.104(b)(ii)(A)(2). Queries should be sent to the U.S. Army Medical Command, Attn: MCHO-CL-H, Fort Sam Houston, TX 78234-6000. Telephone (210) 221-6767/DSN 471-6767.

5137.104-90 -- Procedures.

5137.104-90-1 -- Contracts Requiring Authorization at the Secretarial level.

(a) Personal services contracts pursuant to 10 U.S.C.129(b) and 5 U.S.C.3109 must be authorized by an individual D&F submitted through contracting channels and the addressee in 5101.290(b)(4) to the ASA(ALT) unless services being acquired are covered by the delegation of authority in 5137.104-90-2.

(b) See 5101.707. Submit electronically each D&F with the following information:

(1) An analysis of the proposed compensation in relation to the work to be performed and the Classification Act rate of pay for a regular employee performing similar or comparable services.

(2) A statement signed by the HCA that the employment of the individual(s) by the proposed contract will not cause the installation/activity in which the individual(s) is to work to exceed the civilian personnel authorization established by the Army for that installation/activity.

(3) For stenographic reporting services, the request for D&F must be accompanied by an analysis which clearly establishes that it is either necessary or substantially more economical or feasible to obtain services by contract rather than by OPM appointment.

5137.104-90-2 -- Contracts for Expert, Consultant and Stenographic Reporting Services Covered by a Delegation of Authority.

The contracting officer must prepare a D&F as required by DFARS 237.104(b)(i) for the signature of the authorizing official (see (a)(2), (b) and (c)) to authorize contracts pursuant to 10 U.S.C.129b and 5 U.S.C.3109 for the types of expert, consultant, and stenographic reporting services described in (a), (b) and (c). When a blanket D&F applies, the contracting officer will include in the contract file a copy of the blanket D&F and a statement signed by the contracting officer clearly showing why the blanket D&F is applicable to the proposed contract.

(a) Expert services supporting stage, motion picture or television productions.

(1) Purchase requests for personal services supporting productions must include a clearance from the local visual information (VI) activity supporting acquisition outside VI acquisition channels. See 5137.9101, AR 25-1 and DA PAM 25-91.

(2) Contracts for expert personal services of actors, narrators and other technical and professional personnel listed in the following **Figure 37-1** to support stage, motion picture or television production may be authorized by the following:

(i) Deputy or Assistant Deputy Chief of Staff for Acquisition, U.S. Army Materiel Command.

(ii) Commander, U.S. Army Forces Command.

(iii) Commander, U.S. Army Medical Command.

(iv) Commander, U.S. Army Information Systems Command.

(v) Commander, U.S. Army Military District of Washington.

(vi) Commander, U.S. Army Pacific Command.

(vii) Commander, U.S. Army Training and Doctrine Command.

(viii) Director, Defense Supply Service-Washington (DSS-W).

The persons named may redelegate this authority in writing to individuals under their procurement cognizance, except that the Director, DSS-W, may not redelegate this authority.

Figure 37-1.--List of Expert Personal Services Connected With Stage, Motion Picture, or Television Production

Talents	Musical	Translators, Foreign Languages	Production (Film, Video, Animation, Audiovisual)	Production Staff and Technical Crews
Aerial/Still Photographers	Arrangers	Specialized Lip	Animation Artists	Assistant Director (Film, Video, Television, and/or Commercials)
Aged	Composers	Synchronizatio n	Communication Support Technician	
Art Directors	Conductors	Translation	Directors (special)	Associate Producer
Atmosphere People	Copyists	Straight Translation	English of Various	Caterer/Craft Services
Best Boys	Musicians		Types of Dialects	Directors (Film, Video, Television, and/or
Casting Directors/ Talent Agency			Film Edit Technician	Commercials)
Character Parts			Foreign Language of Various Types	Foley Work
				Key Wardrobe

Child	Dialects of	Supervisor
Costumer	Location Support Gear/Equipmen t	Location Scouts
Director of Photography (Film, Video)	Technician	Post Audio Studio Mixers
Dolly Grips	Narrators (lip synchronization)	Production Assistants (Film, Video, Television, and/or Commercials)
Extras	Narrators (Off/On- Camera)	
Female Leads		Production Managers
Gaffers	Post Audio Recording and Mixing Technician	Re-recording
Graphic Designers/Artists	Screen/Scriptwr iter	Technical Advisor
Grips	Special Effects Technician	Technical Advisor
Hair Stylist		Transportation
	Television and Motion Picture Cameramen	
Juvenile	Theater Technician	
Key Grips	Video Post Production Technician	

Lighting Directors

Writers
(special)

Location Sound
Recordists/ Mixers

Make-up Artist in
Charge and
Assistant Make-up
Artist

Male Leads

Picture Editors
(Film, video,
Television, and/or
Commercial)

Production
Assistant (Film,
Video, Television,
and/or
Commercials)

Production
Designers

Property masters

Scenic Artist

Set Designers

Set Directors

Special Business
Actor

Stunt men

Video Editors

**Figure 37-1 – List of Expert Personal Services Connected With
Stage, Motion Picture, or Television Production**

(b) Expert or consultant services in the field of law for performance outside the United States. Except for the employment of lawyers in their full capacity as advocates, the Deputy Commander-in-Chief, U.S. Army, Europe, may authorize contracts of \$50,000 or less for the personal services of experts or consultants in the field of law for performance outside the United States. Experts or consultants may be employed solely for the purposes of providing legal advice to military and civilian Army officials. See AR 27-50. This authority may not be redelegated below the level of the PARC. Redlegation must be in writing.

(c) Stenographic reporting services. Personal services contracts for stenographic reporting pursuant to 10 U.S.C.129b and in accordance with 5 U.S.C.3109 must be authorized as follows:

(1) The DASA(P) has authority to authorize contracts for stenographic reporting services in connection with White House activities and those categories of services described in (2).

(2) Authority to authorize contracts for stenographic reporting services has been delegated as follows:

(i) To HCAs for hearings in connection with agency Merit System Protection Board appeals and grievances or processing of employee complaints of discrimination under the equal employment opportunity program.

(ii) To HCAs and the Director, DSS-W, for services for other administrative hearings for which verbatim records are required, either by regulation or by order of the administrative board's appointing authority.

(iii) To the Deputy and Assistant Deputy Chief of Staff for Acquisition, U.S. Army Materiel Command, and the Director, DSS-W, for hearings in support of interference aspects of patent prosecution.

The persons named may redelegate this authority in writing to individuals under their procurement cognizance, except that the Director, DSS-W, may not redelegate this authority.

5137.112 -- Government Use of Private Sector Temporaries.

Direct questions about acquisition of these services to the civilian personnel office.

Subpart 5137.2 -- Advisory and Assistance Services

5137.202 -- Exclusions.

Field service representative (FSR) services requested by the contractor.

(1) If the contractor requests an FSR be used solely for advisory service or for liaison between the contractor and the military users of the contractor's equipment or components, the cost of the FSR, to include travel and transportation of baggage and equipment, must not be directly reimbursable by the Government. If the contractor desires to send an FSR for advisory or liaison purposes, the contractor must notify the contracting officer by letter and include --

- (i) The name of the FSR;
- (ii) The dates, times and places of visits;
- (iii) Contract identification; and
- (iv) The equipment and components involved.

After verifying the information in the notification letter, the contracting officer must approve the arrangement by countersigning the letter. The countersigned letter must be the FSR's accreditation and will identify his position and functions in the field.

(2) The contractor must obtain security clearances and the FSR must comply with identification requirements of AR 600-8-14.

(3) An accredited FSR is entitled to the benefits and privileges which AR 600-8-14, paragraphs 6-31b and 6-32, authorizes for U.S. citizen civilian employees of firms under contract to the DoD or a Uniformed Service.

(4) The duration of the assignment of an FSR requested by the contractor must be governed by the controls imposed for contracted field services. See AR 700-4.

Subpart 5137.6—Performance-Based Contracting

5137.602-1—Statements of Work.

All A-76 solicitations will be performance-based. See 5107.304(c).

Subpart 5137.72 -- Educational Service Agreements

5137.7204 -- Format and Clauses for Educational Service Agreements.

DD Forms 1155 or Standard Forms 26, as appropriate, may be used as order forms under educational service agreements.

5137.7204-90 -- Establishing Educational Service Agreements.

Requests and information necessary for the establishment of an educational service agreement will be furnished by one of the offices in 5137.7204-93.

5137.7204-91 -- Purchase Requests.

Requests to issue an order under the educational service agreement must include --

- (a) The estimated cost of training by year, semester, term or quarter;
- (b) The authority to adjust cost figures without requesting approval whenever the actual cost of a course will exceed the estimated cost by less than \$100, except when the course is taught by professors of military science; and
- (c) The information in 5137.7204-92(c)(1)-(4).

The contracting officer shall obtain additional funds in writing from the funding activity when the actual cost of a course will exceed the estimated cost by \$100 or more, except when the course is taught by professors of military science.

5137.7204-92 -- Ordering Procedures.

- (a) Issue a separate order for each required training session (i.e., year, semester, term or quarter) and obligate funds to cover the instruction of those individuals identified on the order form for the period specified.
- (b) To preclude delays in enrollment, an order for the next fiscal year may be issued prior to the availability of funds, notwithstanding 5101.602-2. Insert the clause in FAR 52.232-18, Availability of Funds, in the order. When the funds become available, the contracting officer shall use Standard Form 30 to modify the order to cite the appropriation chargeable and to delete the Availability of Funds clause.
- (c) An order may authorize the enrollment of any number of military personnel or ROTC scholarship cadets and must --
 - (1) Identify each individual authorized to enroll by name and rank (for ROTC scholarship cadets, show social security number in lieu of rank);
 - (2) Identify the individual as an Army Medical Department member or ROTC scholarship cadet, when applicable;
 - (3) Identify each course for which the individual is enrolling and its actual or estimated cost;
 - (4) State the appropriation chargeable for the instruction of each individual; and
 - (5) Include the statement: "Whenever the actual cost of a course will exceed the estimated cost shown on this order by \$100 or more, the Contractor shall submit a written request for approval to the Contracting Officer prior to commencing instruction."

5137.7204-93 -- Distribution of Orders.

Distribute one copy of each order, modification, and payment voucher to --

(a) The Surgeon General, Commander USAHPSA, Health Education Training Division, Attn: SGPS-ED, 5109 Leesburg Pike, Falls Church VA 22041-3258 for Army Medical Department personnel;

(b) The appropriate professor of military science for ROTC scholarship cadets;

(c) Office Of The Deputy Chief Of Staff For Personnel, Director Of Military Personnel Management, Officer Division, Attn: DAPE-MPO-S, 300 Army Pentagon, Washington DC 20310-0300, for Army officer personnel other than those identified in (a) and (b); and

(d) Office of The Deputy Chief Of Staff For Personnel, Director Of Military Personnel Management, Enlisted Division, Attn: DAPE-MPE-PD, 300 Army Pentagon, Washington DC 20310-0300, for Army enlisted personnel other than those identified in (a).

5137.7204-94 -- Gratuitous Agreements.

(a) A gratuitous agreement is an agreement with a civilian educational institution or with a commercial firm for training of military personnel for which the Government does not pay.

(b) Requests and information necessary for the execution of a gratuitous agreement will be furnished the contracting office by one of the offices in 5137.7204-93.

(c) Furnish two copies of the gratuitous agreement to the appropriate addressee in 5137.7204-93. In addition, furnish a copy of the agreement to all Army activities likely to have use for the training covered by the agreement.

Subpart 5137.90 -- Civil Confinement of Military Absentees and Deserters

5137.9001 -- Use of Civil Detention Facilities.

See AR 190-9 and AR 190-47.

Subpart 5137.91 -- Videotape, Motion Picture or Videodisc Productions

5137.9101 -- Contracting for Total Productions.

(a) The U.S. Army Visual Information Center (USAVIC) is the only visual information activity authorized to contract for total productions. See AR 25-1 and DA PAM 25-91.

(b) Requests for total productions shall be directed to the local visual information activity for processing to the USAVIC.

Subpart 5137.92 -- Overseas Military Banking Facilities

5137.9201 -- Solicitation and Contract Clause.

Use the following clause in all solicitations and contracts for the operation of overseas military banking facilities:

AFARS 52.237-9000, Cost Allowability For Military Banking Facilities Contracts (Aug 1992).

Subpart 5137.93 -- Army Continuing Education System (ACES) Contracts

5137.9301 -- References.

AR 621-5 establishes the ACES and prescribes policies and responsibilities for its administration.

(d) AR 350-20 provides for mission-required language training contracted for through ACES.

(e) AR 25-1 describes information centers.

(f) AR 380-67 establishes Army security requirements for instructor personnel employed and paid by American universities to teach at overseas military installations.

5137.9302 -- Educational Services Contracts.

(a) Educational services contracts may be executed to support ACES for Active Component, Reserve Component and Army National Guard soldiers and to provide Headstart language and host nation acculturation programs for Active Component adult family members.

(b) In CONUS, postsecondary and off-duty high school instruction shall be obtained by tuition assistance procedures described in AR 621-5. In OCONUS areas, administrative and logistical support for postsecondary programs may be obtained by contracting if competitive procedures are used.

(c) Contracts must be used for the following:

(1) Conducting Army Education Center instruction for programs listed in AR 621-5 and AR 350-20.

(2) Testing of individuals or groups of individuals who desire to participate in ACES.

(3) Army Learning Center services such as the use of professional, paraprofessional or technical personnel to operate computer laboratories, information centers, language laboratories, military publications reference libraries and provide adjunct instruction for ACES participants.

- (4) Education Transition Management services (for Active Component only).
- (5) Education program development, such as curriculum development, software and courseware development.
- (6) Training for professional development of ACES full-time, permanent, professional staff.

5137.9303 -- Procedures.

See above cited Army Regulations.

Subpart 5137.94 -- Security Clearances and Identification for Contractor Personnel

5137.9401 -- Responsibilities.

The contractor is responsible for obtaining required security clearances and identification cards, tags, and badges in accordance with AR 600-8-14.

Subpart 5137.95 -- Training With Commercial Firms

5137.9501 -- General.

- (a) Refer questions about obtaining commercial training for Army Medical Department personnel to The Surgeon General, Commander USAHPSA, Health Education Training Division, Attn: SGPS-ED, 5109 Leesburg Pke, Falls Church, VA 22041-3258 or by telephone to DSN 761-8309 or (703) 681-8309.
- (b) Refer questions about obtaining commercial training for other Army personnel to the Office Of The Deputy Chief Of Staff For Personnel, Director of Military Personnel Management, Attn: DAPE-MP, 300 Army Pentagon, Washington DC 20310-0300, or by telephone to DSN 225-2497 or (703) 695-2497.

AFARS PART 5138--RESERVED

AFARS -- Part 5139

Acquisition of Information Resources (Reserved)

AFARS -- Part 5141

Acquisition of Utility Services

5141.102 -- Applicability.

See also AR 420-41.

Subpart 5141.2 -- Acquiring Utility Services

5141.201 -- Policy.

The Chief of Engineers is the Department of the Army Power Procurement Officer and responsible for the administration of the purchase and sale of utility services and for policies, engineering, rates, and legal sufficiency in connection with all utility services transactions and contracts in which the Army has a monetary interest. The Chief of Engineers may enter into definite term utility contracts for utility services for periods not to exceed 10 years. This authority may be redelegated to the Deputy Army Power Procurement Officer who is the Chief, Army Power Procurement Office, U.S. Army Center for Public Works.

AFARS -- Part 5142

Contract Administration

5142.1-90 -- Follow-Up on Contract Audit Reports.

5142.1-90-1 -- Responsibilities.

- (a) The Director for Information Management and Assessment, U.S. Army Contracting Support Agency, is the Army's contract audit follow-up official.
- (b) PARCs must perform the functions of the Army's contract audit follow-up official for their respective commands. PARCs must --
 - (1) Establish Overage Audit Review Boards;
 - (2) Ensure that the effective resolution and disposition of audit findings and recommendations in a timely manner while fully protecting the Government's interests is a factor in organizational and individual performance standards and objectives; and
 - (3) Maintain close surveillance of all contract audit reports, resolve, and dispose of any audit reported.
- (c) Chiefs of contracting or contract administration offices must track and assist contracting officers in the resolution and disposition of those audit recommendations which appear unlikely to be resolved within six months of the date of an audit report.
- (d) Contracting officers must --
 - (1) Resolve the recommendations as described in DoDD 7640.2 not later than six months from the date of the audit report and dispose of those recommendations within 12 months;
 - (2) Invite the auditor to participate in the review when it is considered necessary; and
 - (3) Appear before the Overage Audit Review Board to discuss the resolution and disposition of any audit reported in accordance with 15.490-4(c).

5142.1-90-2 -- Tracking of Contract Audit Report Recommendations.

(a) Centrally track all contract audit reports from request for audit through receipt, resolution and disposition. Each contracting or contract administration office, including satellite offices such as GOCOs, shall establish a single entity for requesting, receiving and tracking all audit reports. Provide the activity name, address, attention symbol, point of contact and telephone number of the single entity to the contract administration services office and DCAA regions involved.

(b) Centrally track and report audit report data in accordance with DoDD 7640.2. Maintain a file for each audit report and include in each file the following information:

- (1) Report number.
- (2) Activity address number.
- (3) Issuing agency.
- (4) Date of report.
- (5) Contractor.
- (6) Contract number(s).
- (7) Organization responsible for disposition.
- (8) Contracting officer responsible for disposition.
- (9) Total amount subjected to audit.
- (10) Total questioned costs.

(c) For reportable audit reports, the central files shall also include the following information:

- (1) Type(s) of recommendations contained in report. Use the codes in DoDD 7640.2.
- (2) Target date of resolution.
- (3) Actual date of resolution.
- (4) Target date for disposition.
- (5) Date of final decision (if any) of contracting officer.
- (6) Date of filing with Armed Services Board of Contract Appeals (ASBCA) or court (if any) and docket or case number.
- (7) Disposition results in terms of questioned costs sustained.

5142.490-3 -- Reporting.

The Status Report on Specified Contract Audit Reports (RCS DD-IG(SA)1580), as required by DoDD 7640.2, shall be submitted by each contracting or contract administration office to reach the addressee at 1.290(b)(6), *Attn:* CAF, not later than 15 April and 15 October of each year. Use the Army Contract Audit Follow-up Automated

Program for the status report. Obtain the Program and instructions from the addressee at 511.290(b)(5). Negative reports are required.

5142.490-4 -- Overage Audit Review Boards.

(a) Make every effort to resolve audit recommendations within six months of the date of an audit report and dispose of them within 12 months. Each PARC shall establish and chair an Overage Audit Review Board (the Board) to review the status of open audits reported as overage or unresolved on the Status Report on Specified Contract Audit Reports.

(1) The PARC shall chair the Board. The Board shall:

(i) Be composed of the contracting activity's senior legal, contracting, and pricing personnel.

(ii) Review all open, unresolved audits over six months old and resolved audits over 12 months old that are reported as open on the most recent Status Report on Specified Contract Audit Reports.

(iii) Meet early in November to consider those audits reported on the report due 15 October and early in May to consider those audits listed on the report due 15 April. The Board may meet at other times, as necessary.

(iv) Hear the contracting officer's presentation of efforts to resolve and dispose of the audit recommendations.

(v) Assist the contracting officer in developing a plan of action for timely resolution and disposition of the audit recommendations.

(vi) Provide the contracting officer with necessary guidance and assistance to resolve and dispose of the audit recommendations. This shall include reordering priorities, assigning additional or alternate resources or committing the personal attention of the HCA or the PARC to the effort.

(b) If the PARC determines that it is not practical to have the contracting officer attend the Board meeting because of distance or other reasons, video teleconferencing may be used.

(c) Upon completion of its review, but not later than 30 November and 31 May, the Overage Audit Review Board shall submit to the addressee in 5101.290(b)(6), under a summary cover letter from the PARC, a detailed plan of action for the resolution and disposition of each audit report in the three major categories listed in (1).

(1) The Board shall separate the audits into the following three major categories for reporting:

- (i) 6-12 months old, unresolved.
- (ii) Overage (over 12 months old), unresolved.
- (iii) Overage (over 12 months old), resolved.

(iv) Resolution date slip from previous report.

(2) Each plan of action shall contain the following information:

- (i) Audit report number.
- (ii) Report date.
- (iii) Contractor name.
- (iv) Type of audit.
- (v) Cost questioned or cost avoidance.
- (vi) A narrative plan of action for resolution and disposition of the audit findings.
- (vii) Target resolution date.
- (viii) Target disposition date.
- (ix) Contracting officer's name.
- (x) Contracting officer's phone number.

(3) The Board's report shall describe the action taken under (a)(6) and (7) and identify attendees and their role in the process, such as the contracting officer.

Subpart 5142.15 -- Contractor Performance Information

5142.1502-90 Policy

(a) A Performance Assessment Report (PAR) shall be prepared for those contracts, as well as Level 1 and 2 subcontracts where performance can be clearly measured, and is expected to exceed the following thresholds:

<u>Business Sector</u>	<u>Threshold</u>	<u>Assessing Official</u>
Systems	\$ 5,000,000.	PM
Operations Support	\$ 5,000,000.	Contracting Officer
Services	\$ 1,000,000	Contracting Officer or PM*

Information Technology	\$ 1,000,000.	Contracting Officer
Construction	\$ 500,000	IAW FAR/DFARS/AFARS Parts 36/236/5136
Architect-Engineering	\$ 25,000	IAW FAR/DFARS/AFARS Parts 36/236/5136

* The PM (Program/Project/Product Manager) is the assessing official for those service contracts providing technical or management support to the program office.

(b) Except as provided in 5142.1502-90(j) below, performance reports may be prepared in, and shall be entered and maintained in, the Army Past Performance Information Management System (PPIMS) (See 5142.1503-90(f)).

(c) A PAR shall be prepared upon physical completion of the contract. When the contract period of performance will not exceed 18 months, prepare a single "final" assessment report. If the period of performance will exceed 18 months, prepare an "interim" assessment report at the completion of 12 months performance and annually thereafter until the contract is physically complete. For contracts awarded prior to the effective date of this policy, annual reports shall be prepared twelve (12) months from February 1, 1998, or such earlier date as deemed appropriate by the assessing official.

(d) An out-of-cycle or "addendum" report may be prepared if there is a need to record an extraordinary event prior to the next regularly scheduled evaluation or if it is necessary to report a meaningful occurrence during the period between physical completion of the contract and contract closeout. Additionally, addendum reports may be prepared to record contractor's performance relative to contract close-out and other administrative requirements (e.g. final indirect cost proposals, technical data, etc.)

(e) For indefinite delivery type contracts (except JOC, see AFARS 5117.9005(d) and (j)(2) below), PARs are required when the total estimated contract value exceeds the thresholds for the appropriate business sector and in accordance with the following:

(1) Where the scope of the contract is narrow or orders will be essentially similar, the contracting officer shall prepare reports in accordance with 5142.1502-90(b). If the contracting officer requires assessment input from external ordering offices, such requirement shall be clearly stated in the ordering information/procedures for the basic contract.

(2) Where the scope of the contract is broad or the nature of individual orders could be significantly different, the contracting officer may require the ordering officer to prepare a PAR for each order exceeding \$100,000 in accordance with 5142.1502-90(b). If so, the contracting officer shall clearly state this requirement in the ordering information/procedures for the basic contract.

(3) Any activity issuing an order against another activity's contract shall either prepare the PAR, or provide input to the PAR, as specified in the basic contract.

(f) PARs are required for "joint venture" contracts. The report shall be prepared for the joint venture, not for each participating contractor. However, each contractor will be specifically identified in the performance report. Where specific responsibilities of each contractor is known (e.g., systems integration, software development, propulsion systems, etc.), also include this information.

(g) **Rating System:** Use the following rating system to assess contractor performance for all PPI elements:

(1) **Exceptional (Dark Blue)** - Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor were highly effective.

(2) **Very Good (Purple)** - Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective.

(3) **Satisfactory (Green)** - Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.

(4) **Marginal (Yellow)** - Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.

(5) **Unsatisfactory (Red)** - Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains serious problem(s) for which the contractor's corrective actions appear or were ineffective.

(h) The rating assigned to an element/sub-element must be supported by narrative rationale. Narratives are required for all ratings, and must clearly convey to the contractor, as well as to a Government source selection official who is not familiar with the instant contract, why the rating was assigned. This is especially important for any rating above or below "satisfactory." Narratives should be supported by quantifiable or verifiable documentation. While larger or more complex efforts warrant greater detail, the guideline for any narrative is "clear and concise."

(i) **Exceptions:**

(1) A PAR need not be prepared for: Science & Technology contracts (budget elements 6.1, 6.2 and 6.3) or Facilities/Property Management contracts (FAR 45.302-2). However, HCA's may require that PARs be prepared for Science & Technology contracts, where such is determined to facilitate efficient and effective acquisition. In such cases, the procedures stated herein shall apply. Additionally, the assessing official may choose the most appropriate format to record the contractors past performance information, i.e. "systems" or "non-systems."

(2) PARs for construction and architect-engineering (A-E) services shall be prepared and distributed in accordance with FAR/DFARS/AFARS Parts 36, 236, and 5136. Notwithstanding 5142.1501-90(b)(3)(iii) and (b)(5), PARs for Job Order Contracts (JOC) shall be prepared and distributed in accordance with AFARS 5117.9005(d).

(3) PARs prepared for Special Access Required Programs shall not be input in PPIMS (see 5142.1503-90(f) below). If the information required for input into PPIMS is classified, it shall not be reported. See AR 715-30 as revised, for maintenance of past performance information that cannot be maintained in an unclassified database.

5142.1503-90 Procedures

(a) Preparing Assessments: Assessing officials are responsible for the accurate assessment and timely reporting of contractor performance. The assessment is accomplished by the acquisition team as an on-going process throughout the contract period of performance. The acquisition team is normally comprised of the program and contracting offices, the customer, and cognizant technical, requirements, contract management and contract audit offices. PARs should reflect the team's surveillance and documentation of contractor performance throughout each rating period. The PM shall assess contractor performance on Systems contracts as well as service contracts providing technical or management support to the PM office. The contracting officer shall assess contractor performance on all other contracts. The PAR shall include only that information relevant to source selection. This includes ratings and a clear and concise rationale for that rating.

(b) Contractor Review: In order to provide contractors the opportunity to improve performance, reports should be completed and provided to the contractor for review within 60 days after the end of the rating period. A hard copy of the report will be furnished to the contractor with a cover letter signed by the assessing official requesting contractor comments within 30 calendar days of receipt, and advising the contractor that failure to respond within the designated timeframe will be taken as agreement with the assessment. Alternatively, the PAR may be furnished electronically to the contractor if the contractor concurs in use of the electronic transmission. Evidence of date of receipt by the contractor is required. The assessing official may grant an extension to this 30-day review period.

(c) Contractor Concurrence: Where a contractor concurs with, or takes no exception to a performance report, such report shall be considered final and releasable for use in source selection and other deliberative purposes.

(d) Contractor Rebuttal: Where a contractor takes exception to a performance report, the cognizant assessing official shall review the contractor's rebuttal or comments and, as warranted, make appropriate changes. When changes are made by the assessing official, the narrative shall be modified to reflect the changed rating. The assessing official shall make all reasonable efforts to reconcile the report and the contractor's comments. However, it is not necessary they reach agreement on the report where such is clearly impracticable. The contractor's rebuttal or comments shall be made part of the PAR. The assessing official shall forward the report, to include the contractor's rebuttal and documentation supporting the assessor's position, to the designated reviewing official for agency decision. The reviewing official shall document the PAR to include decision rationale. The decision of the reviewing official is final. The reviewing official will be as follows:

(1) For PEO managed systems - the PEO or designee at a level above the assessing official;

(2) For non-PEO managed systems and all other contracts – a level above the assessing official, and at a minimum, the Chief of the Contracting Office.

(e) Once a final decision is made, provide a copy of the final report to the contractor. Concurrently, the final report, along with the contractor comments or rebuttal, are releasable for use in source selection and other deliberative purposes.

(f) System Administration: The Past Performance Information Management System (PPIMS) is the Army's central repository for past performance information except as noted in 5142.1502-90(k). PPIMS is a web-based automated information system, which provides an on-line, real-time, capability to both prepare PARs and obtain past performance information. It may be accessed through the Army Acquisition Website at: <http://acqnet.saalt.army.mil> or directly at: <https://apps.rdaisa.saalt.army.mil/ppims/prod/ppimshp.htm>

(1) PEOs and HCAs are charged with ensuring only Government personnel with an appropriate need-to-use/know are permitted access to PPIMS. PEOs and HCA's, at their discretion, may establish a centralized focal point to obtain and release past performance information.

(2) HCA's are responsible for designating a primary and alternate PPIMS Administrator for their activity and submitting the individuals name to the address in 5142.1503-90(g). PEO's have the option of designating a primary and alternate PPIMS Administrator for their activity, or utilizing the services of the HCA PPIMS administrator(s) supporting their office. When a designated administrator vacates their position, a replacement must be appointed. The PPIMS Administrators are responsible for sharing information about PPIMS within the organization, providing assistance with user registration, reviewing applications

for accuracy, approving applications, providing user training, ensuring accuracy of site information and serving as the liaison between their organization and the HQDA functional proponent.

(3) The PPIMS Administrator(s) at each contracting or PEO activity shall approve or reject requests for access to PPIMS. The Administrator must verify the requesting individual has a valid need for PPIMS access. In addition, they must routinely scrub their access lists and delete passwords for individuals who no longer require access to prepare assessment reports or obtain past performance information.

(4) All past performance information evaluations and assessments may be used to support future award decisions, and should therefore be marked "For Official Use Only – to be used for deliberative source selection purposes within the Executive Branch and for source selection and other deliberative purposes within DoD." Each page of the PAR shall be annotated with this marking. The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated.

(5) Requests from other Services or Defense Agencies for authorization to access PPIMS shall be referred to SAAL-PA.

(g) Pending implementation of an automated contractor access module, contractors may obtain copies of all their completed performance reports on file within PPIMS by forwarding their request, on corporate letterhead and signed by a senior corporate official, to the OASA(ALT), ATTN: SAAL-PA, 5109 LEESBURG PIKE, SUITE 302, FALLS CHURCH, VA 22041-3201.

(h) SAAL-PA will purge PARs from PPIMS three years after the date of the final report. Purged reports will be archived for an indefinite period for use in trend analyses.

AFARS -- Part 5143

Contract Modifications

Subpart 5143.2 -- Change Orders

5143.205 -- Contract Clauses.

(c) The contracting officer may change the period in which the contractor may assert claims under the Changes clauses to a period less than “30 days.”

**AFARS PART 5144—SUBCONTRACTING POLICIES AND
PROCEDURES**

RESERVED

AFARS -- Part 5145

Government Property

Subpart 5145.1 -- General

45.190—Leasing Personal Property

See AR 700-131.

Subpart 5145.3 -- Providing Government Property to Contractors

5145.300 -- Scope of Subpart.

Coordinate D&Fs for facilities being provided in connection with installation support functions with the installation commander or District Engineer, as appropriate.

5145.391 -- Documentation of Government Property in Solicitations and Contracts.

(a) All solicitations offering Government property for use by contractors and all contracts under which the Government is to furnish property to contractors must contain specific identification of all Government property to be offered or furnished, to include nomenclature, quantity, acquisition value and, where applicable, model number, serial number and year of manufacture.

(b) Contracting officers must ensure that changes to Government property made over time are reflected by modifications to the contract.

5145.392 -- Maintenance of Records of Contracts Bearing Government Property.

Each contracting activity must maintain a record of all open contracts that provide for Government property to be furnished to or acquired by the contractor.

Subpart 5145.4 -- Contractor Use and Rental of Government Property

5145.404 -- Rent-Free Use.

The contracting officer must document the contract file to show the basis for rent-free use of Government property.

5145.407 -- Non-Government Use of Plant Equipment.

(a)

- (i) Approval authority is delegated only to HCAs . Each request for approval must include the following:
- (ii) How the Government's interest is served. Identify and justify use of one or more of the criteria in FAR 45.407(b). Support with quantitative data.
- (iii) How the percentage of non-Government use is computed, to include the following (account for 100 percent of available time):
 - (a) Total available time.
 - (b) Government-use time.
 - (c) Idle time.
- (iv) When a rental charge is proposed, the amount of the charge and how it is computed. If charge is to be different from prescribed rates, provide justification.
- (v) When rent-free use is proposed, both tangible and intangible consideration passing to the Government and the contractor.
- (vi) Explain whether or not the contractor will gain a competitive advantage if request is approved.
- (vii) The extent to which the contractor will be harmed if the request is denied.
- (viii) How the Industrial Preparedness Program will be adversely affected if the request is denied.

Subpart 5145.5 -- Management of Government Property in the Possession of Contractors

5145.503 -- Relief From Responsibility.

(a)

- (5) The determination by the contracting officer serves the same purpose as a Report of Survey (see AR 735-5) in a Military Property Account. The contracting officer must document the contract file to show the circumstances surrounding the loss or damage and the property administrator's and contracting officer's actions to investigate the case. Cite the specific contract terms on which the determination is based, and include all the information required to fully support the determination.

5145.504 -- Contractor's Liability.

When the contracting officer determines that the Government is due compensation, he/she must issue a written request (demand) to the contractor; with a copies to the disbursing officer and property administrator.

5145.505 -- Records and Reports of Government Property.

(a) When the contractor's property control records are not used as the Government's official property records, the property administrator must maintain the records and reports specified in FAR 45.505, DFARS 245.505, and DoD 4161-2-M that are necessary for effective property control, to include DD Form 1662.

5145.505-14 -- Reports of Government Property.

(1) The Web-based Contract Property Management System (CPMS) will be used for input of all data on Government property in the possession of contractors.

(90) Contracting activities must use the Annual Summary Report of DoD Property in the Custody of Contractors furnished by the IEA during the second quarter of each fiscal year to actively manage the Government property they have entrusted to contractors. As a minimum, contracting activities must --

(a) Compare the summary report with records kept in accordance with 5145.392 and any other available records to detect --

(1) Contracts with Government property for which no DD Form 1662 has been submitted;

(2) Contracts reporting Government property via DD Form 1662 but not in the records required by 5145.392; and

(3) Contracts that are completed.

(b) If contracts are missing from the annual summary report, contracting activities shall, within 60 days of receipt of the summary, send written inquiry to the cognizant ACO at the DCMA regarding nonsubmission of the DD Form 1662 and/or status of contract completion and availability of Government property for reutilization, as appropriate.

5145.506 -- Identification.

(c)

(3) The standard Departmental registration system numbering is applicable to the following equipment:

- (A) Motor vehicles (AR 58-1).
- (B) Materials handling equipment (AR 708-1).
- (C) Railroad equipment (AR 56-3).

5145.508 -- Physical Inventories.

5145.508-1 -- Inventories Upon Termination or Completion.

(b) *Exception.*

(i) The property administrator must request the contractor to furnish the following at least 120 days prior to contract completion:

(A) A listing of all Government property required to support contractual follow-on requirements or other known requirements, including spares and mobilization readiness requirements. This listing shall identify the category, quantity, and acquisition cost of such property, i.e., IPE, OPE, ST, STE, agency-peculiar property, and material.

(B) Justification for retention of any Government property not currently in use (see FAR 45.102(f)).

(ii) Upon receipt of the contractor's submission, the property administrator must:

(A) Review and verify the contractor's stated Government property requirements, with assistance from other technical specialists when required.

(B) Forward a copy of the contractor's follow-on contract requirements list and retention justification statement, together with findings and recommendation, to the contracting officer.

(iii) Final decisions with respect to transfer of Government property to follow-on contracts shall be made by the contracting officer within 90 days after receipt of the contractor's list and justification statement. If transfer approval or other disposition instructions have not been received by the end of the 90-day period, the property administrator shall issue a follow-up which states,

"Your failure to respond within 30 calendar days of the date of this follow-up inquiry will be interpreted to mean that the Government property in question should be disposed of in accordance with FAR 45.603."

(iv) Authorized transfer of Government property to a follow-on contract shall be accomplished by contract modifications which delete the property from the completed contract and incorporate it in the follow-on contract. The modifications shall include a list of the type, quantity and acquisition cost of property being transferred.

(v) The property administrator and the ACO should be sure that all property being transferred has been provided by the Government or acquired by the contractor under an appropriate contract type, i.e., facilities normally should be provided or acquired under a facilities contract as required by FAR 45.302-2 and 45.302-3. If facilities were provided to or acquired by the contractor improperly, the ACO shall notify the PCO and request the execution of a facilities contract or a contract modification incorporating the property in an existing facilities contract. When warranted, the ACO shall initiate action to recoup inappropriate fees or profits paid when facilities were provided to or acquired by the contractor improperly.

5145.511 -- Audit of Property Control System.

See AR 36-5 for information on audits. Requests for waivers and deviations to accounting procedures for Government property furnished to, or acquired by, contractors under the terms of their contract shall be submitted in accordance with AR 735-5.

Subpart 5145.6 -- Reporting, Redistribution, and Disposal of Contractor Inventory

5145.612 -- Removal and Storage.

5145.612-3 -- Special storage at Government's expense.

(a) Determinations that contractor inventory may be stored at the Government's expense for one year or more must be approved at a level higher than the contracting officer.

5145.690 -- Reutilization of Government Property.

Immediately upon notification of contract completion, contract termination, or Government property being reported as excess, the CO must query the owner of the property for instructions regarding reutilization or disposal of the property.

AFARS -- Part 5146

Quality Assurance

Subpart 5146.7 -- Warranties

5146.702 -- General.

- (c) See AR 700-139 for procedures on tracking and accumulating data on warranty costs.

**AFARS PART 5147—TRANSPORTATION
RESERVED**

AFARS -- Part 5148

Value Engineering

Subpart 5148.1 -- Policies and Procedures

5148.102 -- Policies.

- (b) See AR 5-4 for procedures and reporting requirements.

AFARS -- Part 5149

Termination of Contracts

Subpart 5149.1 -- Termination of Contracts

5149.101 -- Authorities and Responsibilities.

(b)

(i) Contracting officers should exercise the authority to terminate a contract for convenience of the Government only after proper authorization and instructions from the activity which requested that the contract be established.

(ii) Contracting officers should not terminate any contract for convenience if the contractor is in inexcusable default and the Government has a legal right to terminate for default, even if the Government's requirements for performance no longer exist. This prohibition does not preclude a no-cost termination settlement agreement as provided for at FAR 49.402-4(c).

(iii) Terminate contracts resulting from MIPRs in accordance with DFARS 208.7004-6 and 208.7004-7.

5149.107 -- Audit of Prime Contract Settlement Proposals and Subcontract Settlements.

(a) Within five calendar days after receipt from the contractor, send electronically all settlement proposals to the responsible audit office, including inventory and accounting information and related documents.

Subpart 5149.4 -- Termination for Default

5149.402 -- Termination of Fixed-Price Contracts for Default.

5149.402-3 -- Procedure for default.

(e)

(4) Contracting officers should not terminate for default any contract with a small business firm to whom a Certificate of Competency was issued, or to whom loans were made with SBA's participation, without prior written approval of the HCA.

(f)

(6) When unliquidated progress payments, advance payments, guaranteed loans, or anticipated excess repurchase costs are involved, the contracting officer must:

(A) Obtain from the ACO a statement of the value of the inventory that may be available for offset against the outstanding financing.

(C) Identify and state the approximate amount of the excess acquisition costs applicable.

Subpart 5149.70 -- Special Termination Requirements

5149.7001 -- Congressional Notification on Significant Contract Terminations.

(c) Send the clearance request through the HCA directly to the addressee at 5101.290(b)(10) or by facsimile at DSN 227-6988 or (703) 697-6988.

5149.7002 -- Notification and Reporting of Substantial Impact on Employment.

(b) The contracting officer must send the notification through the HCA to the Office of Economic Adjustment; send a copy of the notification by facsimile to the U.S. Army Contracting Support Agency, Attn: SFAE-CSA-PPS, at DSN 761-2304 or (703) 681-2304.

AFARS -- Part 5150

Extraordinary Contractual Actions

Subpart 5150.1 -- General

5150.105 -- Records.

(1)

(iii) The contracting officer is responsible for preparing, submitting, and receiving all records not directed to be prepared, submitted, or received by others.

Subpart 5150.2 -- Delegation of and Limitations on Exercise of Authority

5150.201-70 -- Delegations.

(a) The ASA(AL&T) has delegated to HCAs, with authority to redelegate no lower than PARCs, the authority to --

(i) Deny any request for contractual adjustment of the type described in FAR Subpart 50.3;

(ii) Make all D&Fs required by the Act of 28 August 1958 (Pub.L. 85-804), Executive Order 10789 and FAR Part 50;

(iii) Approve, authorize and direct appropriate action in those cases set forth as examples under the categories of correcting mistakes and formalizing informal commitments in FAR 50.302-2 and 50.302-3, subject to the limitations in FAR 50.203;

(iv) Where necessary to the exercise of the authority in (iii), modify or release unliquidated obligations of any sort and to extend delivery and performance dates;

(v) Refer to the Army Contract Adjustment Board any case in which the HCA, or PARC if authority has been redelegated, determines that an appropriate contractual adjustment is justified, but for which the HCA or PARC does not have the authority to make the adjustment; and

- (vi) Refer to the Army Contract Adjustment Board, for its determination, any doubtful or unusual cases under (i) through (iv).

Subpart 5150.3 -- Contract Adjustments

5150.305 -- Processing Cases.

5150.305-70 -- Record of Request.

The contracting officer must file preliminary records within five working days of receipt of a request for a contract adjustment with the Recorder, Army Contract Adjustment Board, Office of the General Counsel, 104 Army Pentagon, Attn: SAGC, Washington DC 20310-0104.

5150.305-71 -- Processing cases to contract adjustment boards.

- (a) Send documents to the addressee in 5150.305-70.

5150.306-70 -- Record of disposition.

- (a) Submit documents to the addressee in 5150.305-70 within five working days of a decision on a request.

AFARS PART 5151—USE OF GOVERNMENT SOURCES BY CONTRACTORS

5151.1—Contractor use of Government supply sources

5151.100—Depots and arsenals as subcontractors

Army working capital funded industrial facilities may manufacture or remanufacture articles and sell these articles, as well as manufacturing or remanufacturing services provided by such facilities, to persons outside the Department of Defense if: (1) the person purchasing the article or service is fulfilling a Department of Defense contract; and (2) the Department of Defense solicitation for such contract is open to competition between Department of Defense activities and private firms. See Title 10 U.S.C. Section 2208.

AFARS -- Part 5152

Texts of Provisions and Clauses

Subpart 5152.1 -- Instructions for Using Provisions and Clauses

5152.101 -- Using Part 5152.

(b) *Numbering.*

(2) Provisions or clauses that supplement the FAR.

(ii)

(A) The numbers of clauses or provisions published in the *Federal Register* and codified in Title 48, Code of Federal Regulations (CFR), shall be preceded by 51, the Chapter number assigned to the Army by the CFR staff.

(iii) Army major commands must number supplemental provisions or clauses using four-digit sequential numbers in the 5000 series. Their subordinate commands or contracting offices shall use numbers in the 4000 series.

Subpart 5152.2 -- Texts of Provisions and Clauses

5152.237-9000 – Adjustments to Contractor’s Coefficient for Option Years (Job Order Contracts).

Application. For job order contracts, insert the following clause in solicitations and contracts in accordance with 5117.9004-2(h).

Adjustments to Contractor’s Coefficient for Option Years

(Job Order Contracts)

‘Pricing’ of option periods, to include consideration of any adjustments must be performed by an economic price adjustment for those periods, as follows:

An economic adjustment will be applied to the contract coefficient(s) addressing changes in the cost of labor, equipment and material in the Unit Price Book (UPB)

(this includes consideration of Davis Bacon issues). This allows for economic increase or decrease of the prices in the Unit Price Book (UPB) and serves to adjust line item prices by the percentage increase or decrease of the economic trend in the construction market. The economic price adjustment will be based on the Building Cost Index (BCI) found in the Market Trend pages of the Engineering News Record (ENR). The economic adjustment is not applied to the cost items comprising the coefficient. No upward adjustment can apply to delivery orders awarded prior to the effective date of the adjustment, regardless of the date of commencement of work thereunder.

The adjustment will be made in accordance with the following equation. The resulting revised coefficient(s) must be applied throughout the option year.

$$N = C + i$$

Where: N = New Coefficient

C = Base Year Coefficient

i = Change Factor (% increase or decrease from base to option year)

The Index Factor, i, shall be computed according to the following equation:

$$i = \frac{BCI_N}{BCI_C} - 1$$

BCI_C

Where:

BCI_N is the Building Cost Index, published in the ENR, for the month prior to the effective date of the option period.

BCI_C is the Building Cost Index, as published in the ENR, on the date of the award of the contract. The BCI_C is _____, based on the award date of _____.

If the BCI or the ENR ceases to be published, the parties shall agree on substitute indices.

Example: For the base year of a contract the coefficient is 1.10. The cost to the government for a line item whose cost is \$100.00 is 1.10 x \$100.00 = \$110.00.

Option Year 1. For the first option year the coefficient will be adjusted as follows:

$$i = \frac{BCI_N}{BCI_C} - 1 = \frac{3111.86}{3071.10} - 1 = 1.0133 - 1 = .0133$$

The new coefficient would be calculated as follows:

$$N = C + i = 1.10 + 0.0133 = 1.1133$$

The above line item under the option period would be $1.1133 \times \$100.00 = \111.33 .

Option Year 2. For the second option year, if the BCI for the month prior to the effective date of the option period was 3002.99, the coefficient will be adjusted as follows:

$$i = \frac{BCI_N}{BCI_C} - 1 = \frac{3062.99}{3071.10} - 1 = .9974 - 1 = -0.0026$$

The new coefficient would be calculated as follows:

$$N = C + i = 1.10 - 0.0026 = 1.0974$$

The above line item under the second option period would be $1.0974 \times \$100.00 = \109.74

Note 1. Round calculations for the Change Factor (i) to the nearest ten thousandth.

Note 2. ENR indices for calculation of coefficients for the option years are taken from the McGraw Hill publication, ENR, published during the month prior to the effective date of the option. The ENR Index for the base year (contract award) is the most recent ENR index published for the month prior to initial contract award.

AFARS -- Part 5153

Forms

Subpart 5153.2 -- Prescription of Forms

5153.204 -- Administrative Matters.

5153.204-70 -- DD Form 350, Individual Contracting Action Report.

(a) *Part A of the DD Form 350.*

(1) *Block A1, Type of Report.*

(ii) *Code 1 -- Canceling.* Enter the data contained in the original action in all blocks, except Block A1 of the canceling action which must contain a “1.” The canceling action must pass the current DoD edit specifications. If the action fails the edit because codes have changed since the original action was submitted, update the canceling action as necessary so it will pass the edit.

(iii) *Code 2 -- Correcting.* Use Code 2 only when correcting a report that has already been successfully submitted. A correcting report must be submitted with entries in all applicable blocks to pass the DoD edit specifications. If the correcting report does not pass the edit, verify the entries against the current edit specifications.

(b) *Part B of the DD Form 350.*

(1) *Block B1, Contract Number.*

(A) For actions covered by DFARS 204.670-6(b)(6) (USACCE utilities vouchers), enter the contract number under which the largest payment is made when more than one contract number applies to transactions being reported on a single DD Form 350.

(B) For actions covered by DFARS 204.670-6(b)(6) (USACCE utilities vouchers), enter the six-digit activity identifier followed by the two-digit fiscal year, the letter “Z” and four zeroes, e.g., DAKF1290Z0000.

(5) *Block B5, Contractor Identification Information.*

(ii)

(A) *Block B5A, Establishment Code.* For actions covered by DFARS 204.670-6(b)(6)(USACCE utilities vouchers), enter 15491629A.

(B) *Block B5B, Cage Code.* For actions covered by DFARS 204.670-6(b)(6) (USACCE utilities vouchers), enter 0BU33 (first position is zero).

(C) *Block B5C, Contractor Name and Division Name.* For actions covered by DFARS 204.670-6(b)(6) (USACCE utilities vouchers), enter European Utility Companies.

(e) *Part E of the DD Form 350.*

(4) *Block E8:* For actions covered by DFARS 204.670-6(b)(6) (USACCE utilities vouchers), enter the number of actions that were consolidated on the single DD Form 350.

5153.204-71 -- DD Form 1057, Monthly Contracting Summary of Actions \$25,000 or Less.

(d)(7)

(ii) Enter the subtotals for the number and dollar value of contracting actions as prescribed in DFARS 253.204-71(d)(7)(ii)(A) through (E).

5153.213-70 -- Instructions for completion of DD Form 1155.

(e) *Instructions for DD Form 1155 entries.*

Block 19 Schedule of Supplies or Services -- For delivery order under JOC, see 17.9004-3(h).

Subpart 5153.90 -- Standard Army Formats.

5153.9000 -- General.

This subpart sets forth standard formats for specified actions. These formats may be tailored, where appropriate, to fit the specific acquisition or contracting action.

5153.9001 -- Sample COR designation.

Use official letterhead and follow standard procedures for correspondence. Address the designation to the individual by name, including rank or grade, and full mailing address.

Subject: Designation of Contracting Officer's Representative (COR) for Contract (Enter number.).

1. Pursuant to DFARS 201.602-2, you are designated as the contracting officer's representative (COR) in administration of the following contract:

Contract Number:
For: (Enter item/system/services.)
Contractor:
Contract Period:

2. You are authorized by this designation to take action with respect to the following:

- a. Verify that the contractor performs the technical requirements of the contract in accordance with the contract terms, conditions and specifications. Specific emphasis should be placed on the quality provisions, for both adherence to the contract provisions and to the contractor's own quality control program.
- b. Perform, or cause to be performed, inspections necessary in connection with paragraph 2a and verify that the contractor has corrected all deficiencies. Perform acceptance for the Government of services performed under this contract.
- c. Maintain liaison and direct communications with the contractor. Written communications with the contractor and other documents pertaining to the contract shall be signed as "Contracting Officer's Representative" and a copy shall be furnished to the contracting officer.
- d. Monitor the contractor's performance, notify the contractor of deficiencies observed during surveillance and direct appropriate action to effect correction. Record and report to the contracting officer incidents of faulty or nonconforming work, delays or problems. In addition, you are required to submit a monthly report concerning performance of services rendered under this contract.
- e. Coordinate site entry for contractor personnel, and insure that any Government-furnished property is available when required.

3. You are not empowered to award, agree to or sign any contract (including delivery orders) or contract modification or in any way to obligate the payment of money by the Government. You may not take any action which may affect contract or delivery order schedules, funds or scope. All contractual agreements, commitments, or modifications which involve price, quantity, quality, delivery schedules, or other terms and conditions of the contract must be made by the contacting officer. You may be personally liable for unauthorized acts. You may not re-delegate your COR authority.

4. This designation as a COR will remain in effect through the life of the contract, unless sooner revoked in writing by the contracting officer or unless you are separated from Government service. If you are to be reassigned or to be separated from Government service, you must notify the contracting officer sufficiently in advance of reassignment or separation to permit timely selection and designation of a successor COR. If your designation is revoked for any reason before completion of this contract, turn your records over to the successor COR or obtain disposition instructions from the contracting officer.

5. You are required to maintain adequate records to sufficiently describe the performance of your duties as a COR during the life of this contract and to dispose of such records as directed by the contracting officer. As a minimum, the COR file must contain the following:

- a. A copy of your letter of appointment from the contracting officer, a copy of any changes to that letter, and a copy of any termination letter.
- b. A copy of the contract or the appropriate part of the contract and all contract modifications.
- c. A copy of the applicable quality assurance (QA) surveillance plan.
- d. All correspondence initiated by authorized representatives concerning performance of the contract.
- e. The names and position titles of individuals who serve on the contract administration team. The contracting officer must approve all those who serve on this team.
- f. A record of inspections performed and the results.
- g. Memoranda for record or minutes of any pre-performance conferences.
- h. Memoranda for record of minutes of any meetings and discussions with the contractor or others pertaining to the contract or contract performance.
- i. Applicable laboratory test reports.
- j. Records relating to the contractor's quality control system and plan and the results of the quality control effort.
- k. A copy of the surveillance schedule.
- l. Documentation pertaining to your acceptance of performance of services, including reports and other data.

5. At the time of contract completion, you will forward all records to the contracting officer for retention in the contract files.
6. All personnel engaged in contracting and related activities shall conduct business dealings with industry in a manner above reproach in every aspect and shall protect the U.S. Government's interest, as well as maintain its reputation for fair and equal dealings with all contractors. DoD 5500.7-R sets forth standards of conduct for all personnel directly and indirectly involved in contracting.
7. A COR who may have direct or indirect financial interests which would place the COR in a position where there is a conflict between the COR's private interests and the public interests of the United States shall advise the supervisor and the contracting officer of the conflict so that appropriate actions may be taken. CORs shall avoid the appearance of a conflict of interests to maintain public confidence in the U.S. Government's conduct of business with the private sector.
8. You are required to acknowledge receipt of this designation on the duplicate copy and return it to the contracting officer. Your signature also serves as certification that you have read and understand the contents of DoD 5500.7-R. The original copy of this designation should be retained for your file.

Signature Block Of
Contracting Officer

Receipt of this designation is acknowledged.

Name: _____
Title:
Rank/Grade: Telephone

(Print or type) Signature:
Date:

5153.9002 -- Sample Ordering Officer Appointment.

Use official letterhead and follow standard procedures for correspondence. Address the appointment to the individual by name, including rank or grade, and full mailing address.

Subject: Appointment of Ordering Officer

1. **Appointment.** Under AFARS 5101.602-2-91, you are appointed an Ordering Officer for the purposes set forth in paragraph 2. Your appointment becomes effective (enter date) and will remain effective, unless sooner revoked, until expiration of the contract(s) enumerated in paragraph 2 or until you are reassigned or your employment is terminated. You are responsible to and under the technical

supervision of the chief of the (enter name of installation or activity) contracting office for your actions as an Ordering Officer.

2. Authority, Limitations and Requirements. Your appointment is subject to the use of the following method(s) of purchase, limitations and requirements:

a. Subject to your ensuring that local purchase authority exists for the transaction, you may make purchases using imprest funds for payments and using Standard Form 1165, Receipt for Cash - Subvouchers, provided all of the following conditions are satisfied:

(1) The aggregate amount of a purchase transaction is not in excess of \$500 under emergency conditions. You may not split purchases to avoid this monetary limitation.

(2) The supplies or nonpersonal services are available for delivery within 60 calendar days, whether at the supplier's place of business or at destination.

(3) The purchase does not require detailed, technical specifications or technical inspection.

b. Subject to your ensuring that funds are available and that local purchase authority exists for the transaction, you may make purchases using Standard Form 44, Purchase Order -- Invoice -- Voucher, provided all of the following conditions are satisfied:

(1) The aggregate amount of the purchase transaction is not in excess of \$2,500. You may not split purchases to avoid this monetary limitation.

(2) Supplies or nonpersonal services are immediately available.

(3) One delivery and one payment shall be made.

c. Subject to your ensuring that funds are available and that local purchase authority exists for the transaction, you may place delivery orders (DD Form 1155) without monetary limitation, except that specified in individual contracts, against --

(1) Brand Name contracts published in Defense Personnel Support Center Supply Bulletins in the SB 10-500 or SB 10-600 series;

(2) Defense Personnel Support Center requirements contracts for subsistence items;

(3) Defense Fuel Supply Center and Defense General Supply Center requirements contracts; and

(4) The following indefinite delivery contracts, copies of which are attached: (List contracts by number and name of contractor.)

d. Subject to your ensuring that funds are available and that local purchase authority exists for the transaction, you may place Service Orders for Household Goods, DD Form 1164, against Commercial Warehousing and Related Services for Household Goods contracts for military and civilian personnel, subject to the criteria and procedures prescribed in DoD 4500.34-R, Chapter 2, and provided that no Service Order shall be in excess of \$10,000.

e. You are responsible for

(1) distributing and administering delivery orders that you place,

(2) establishing controls necessary to ensure that all contract terms and conditions are met and that supplies or nonpersonal services ordered conform to contract requirements before acceptance is made or payment authorized, and

(3) reporting deficiencies in contractor performance promptly to the contracting officer who awarded the contract against which the delivery order was placed. You may not make any changes in the terms or conditions of any contracts against which you place delivery orders.

f. The authority granted in this appointment may not be redelegated to any other person.

3. Standards of Conduct and Contracting Action Reporting Requirements.

a. You shall comply with the standards of conduct prescribed in DoD 5500.7-R.

b. You shall furnish the undersigned and the contracting officer to whom you are responsible such information as may be required for contracting action reporting purposes in the manner and the time specified.

4. Termination of Appointment.

a. Your appointment may be revoked at any time by the undersigned authority or successor and shall be terminated in writing, except that no written termination of your appointment shall be made upon expiration or termination of contracts enumerated in paragraph 2.

b. Should you be reassigned from your present position or separated from Government service while this appointment is in effect, you shall promptly notify the appointing authority in writing. Your appointment will be terminated in writing if you are reassigned; it shall automatically be

terminated on the date you are separated from Government service, if it is not revoked sooner.

5. ***Acknowledgement of Receipt.*** You are required to acknowledge receipt of this appointment on the duplicate copy and return it to the contracting officer. Your signature also serves as certification that you have read and understand the contents of DoD 5500.7-R. The original copy of this designation should be retained for your file.

Signature Block Of
Appointing Authority

Receipt of this appointment is acknowledged.

Name: (Print or type) Signature:

Title: Date:

Rank/Grade: Telephone:

5153.9003 – Sample Memorandum for Waiver of the Berry Amendment.

MEMORANDUM FOR –[Insert name of requiring activity].

SUBJECT: Waiver of the Berry Amendment

I have reviewed the request for waiver of the provisions of the Berry Amendment (10 U.S.C. 2241, note) from –[insert name of requiring activity]—pertaining to the purchase and use of—[insert name of item(s)]—in the manufacture of –[insert name of item(s)]. In the course of this review, I have considered the alternatives which would not require approval of this waiver, and I find them to be unacceptable.

Accordingly, I determine that the provisions of the Berry Amendment are waived for the item(s)/program(s) set forth within this request. Specifically, my determination shall cover the –[insert name of item(s)/program(s)].

This approval expires [insert number] months from this date or sooner if a U.S. product becomes available.

[Insert Secretary of the Army name]

5153.9004 -- Format for a Justification Review Document for Other Than Full and Open Competition.

Control No:

Justification Review Document for Other Than Full and Open Competition

Program/Equipment:**Authority: Amount:****Prepared by:**

Typed Name:

DSN: _____

Title:

Date: _____

E-mail: _____

Contracting Officer:

Typed Name:

DSN: _____

Date Reviewed: _____

E-Mail: _____

Technical Representative:

Typed Name:

DSN: _____

Title:

Date Reviewed: _____

Requirements Representative:

Typed Name:

DSN: _____

Title:

Date Reviewed: _____

Reviews: I have reviewed this justification and find it adequate to support other than full and open competition.

Program Manager (1)

Typed Name:

DSN: _____

Signature: _____

Date: _____

Legal Counsel

Typed Name:

DSN: _____

Signature: _____

Date: _____

Principal Assistant Responsible for Contracting

Typed Name:

DSN: _____

Signature: _____

Date: _____

(1) Add PEO signature block when item is PEO managed.

Special Competition Advocate

Typed Name:

DSN: _____

Signature:

Date: _____

Head of the Contracting Activity

Typed Name:

DSN: _____

Signature:

Date: _____

5153.9005 -- Format for a Justification and Approval for Other Than Full and Open Competition.

Control No:

**Justification and Approval for Other Than Full and
Open Competition Justification**

1. **Contracting Activity:** Specify the contracting activity responsible for this action.
2. **Description of Action:** State whether approval is being requested for a new contract or a modification. Include type of contract, type of funds to be used (R&D, OPA, OMA) and, when applicable, the estimated share and ceiling arrangements, and fee or profit.
3. **Description of Supplies/Services:** Describe the supplies/services. Include the estimated total value, including options, if any. **Prior to exercising options included in a previously approved J&A, these options must be individually rejustified and approved in writing at the same level as the original J&A. This requirement is not waivable, either on an individual or class basis. The rejustification shall contain the following: (1) a copy of the original J&A, and (2) a written determination by the Contracting Officer that comprehensive, current market research has been utilized to justify the exercise of the option, and a summary and analysis of what the market research found. In addition, the rejustification shall contain all of the requirements of FAR 17.2, which are applicable to the exercise of a sole source option. The rejustification shall be submitted for approval through contracting channels to the same level that approved the original J&A.**

In accordance with 10 U.S.C. 2304 (c)(2), when the need to exercise a sole source option for supplies and services is of such an unusual and compelling urgency that the Government would be seriously injured unless the option is exercised, the rejustification must be submitted for approval no later than 15 days after the option is exercised. This provision must only be used in those situations (as defined in 10 U.S.C. 2304 (c)(2)) where an unusual and compelling urgency exists, and where the delay in exercising the option will result in serious injury to the Government. In these cases, the rejustification (in addition to those items enumerated in this paragraph) will also contain a discussion addressing the unusual and compelling urgency, and the need to exercise the option before approval can be obtained. The requirement set forth in this paragraph is not waivable, either on an individual or class basis.

4. **Authority Cited:** Identify the statutory authority permitting other than full and open competition, followed by the FAR citation and FAR citation title.

5. **Reason for Authority Cited:** Describe how this action requires the use of the authority cited. If applicable, identify the proposed or potential contractor(s), and include a discussion of the proposed contractor's unique qualifications for fulfilling the contract requirements. If the authority is FAR 6.302-1, include the required delivery schedule and lead-time involved. If the authority is FAR 6.302-2, include the required delivery schedule and lead-time involved as well as a discussion of the serious injury to the Government which would result if award of a contract is delayed.

6. **Efforts to Obtain Competition:** Describe efforts to ensure that offers are solicited from as many potential sources as is practicable. Also describe the extent of effective competition anticipated for this acquisition.

7. **Actions to Increase Competition:** There may be instances when it is not possible to compete the current acquisition. Include a statement of the actions taken, or to be taken, to increase competition (e.g., breakout) before any subsequent acquisition of the supplies or services. If the requirement is for a repair part, address whether or not it has been screened under DFARS Appendix E. If it has been screened, provide the Acquisition Method Code (AMC) and Acquisition Method Suffix Code (AMSC). Provide the approximate date the technical data package will be available.

8. **Market Research:** Describe the extent and the results of the market research (FAR Part 10) conducted to identify all qualified sources. Research must have been meaningful and conducted within the previous 12 months.

9. **Interested Sources:** Include a listing of the sources that have written to express interest in the acquisition. If applicable, clearly state that "To date, no other sources have written to express an interest." If 10 U.S.C.2304(c)(1) is the authority cited, explain why other sources were rejected. Also, state that the notices required by FAR 5.201 shall be or have been published, and that any bids or proposals received shall be considered. If a CBD notice will not be published, state which exception in FAR 5.202 applies.

10. **Other Facts:** Discuss any other facts supporting the use of other than full and open competition, such as the following:

a. *Procurement history.* Reasonable efforts to retrieve the following items from computer records, contract files, competition advocate office files or other sources are expected:

- (1) Contract numbers and dates of the last several awards.
- (2) Competitive status of these actions.
- (3) Authority previously used for less than full and open competition.

(4) If a justification was prepared to support the procurement made before this one, a summary of the contents of paragraph 7 of the justification for that procurement and an explanation of the results.

(5) If any prior award was accomplished by full and open competition, a detailed explanation of the changed circumstances.

(6) An explanation of any unusual patterns which may be revealed by the history, e.g., several consecutive, urgent buys.

(7) If a justification was prepared to support the procurement made before this one, briefly describe the circumstances justifying the buy and whether there have been any significant changes.

b. *Acquisition data availability.* Explain why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition have not been developed or are not available. Describe actions taken or planned to remedy this situation.

c. *Unusual and compelling urgency.* When FAR 6.302-2 is cited, provide data, estimated cost or other rationale to explain the nature and extent of the injury to the Government. If the delay associated with the requirement for first article testing is the principal reason for not awarding the contract on a full and open basis, clearly describe the reasons that first article testing is required on this procurement and why other means of assuring quality are not being used.

d. *Subcontracting competition.* In single source situations, address efforts to be taken by the Government to assure that the prime contractor obtains as much competition as possible in its subcontracting.

11. Technical Certification: Include the following statement:

I certify that the supporting data under my cognizance which are included in the justification are accurate and complete to the best of my knowledge and belief.

Typed Name: _____

Date: _____

Title: _____

Signature: _____

12. Requirements Certification: Include the following statement:

I certify that the supporting data under my cognizance which are included in the justification are accurate and complete to the best of my knowledge and belief.

Typed Name: _____

Date: _____

Title: _____

Signature: _____

13. Fair and Reasonable Cost Determination: Include the following determination:

I hereby determine that the anticipated cost to the Government for this contract action will be fair and reasonable.

Provide the basis for this determination (e.g., describe techniques to be used to determine fair and reasonable price, such as cost analysis, price analysis, audit, should cost, independent Government estimate, etc.).

Typed Name: _____

Date: _____

Title: _____

Signature: _____

14. Contracting Officer Certification: This certification shall be made by the contracting officer who will sign the contract resulting from this justification and approval. Include the following statement:

I certify that this justification is accurate and complete to the best of my knowledge and belief.

Typed Name: _____

Date: _____

Title: _____

Signature: _____

Approval

Based on the foregoing justification, I hereby approve the procurement of (state equipment/services being procured) on an other than full and open competition basis pursuant to the authority of 10 U.S.C.2304(c)(insert authority), subject to availability of funds, and provided that the services and property herein described have otherwise been authorized for acquisition.

Date: _____

Signature: _____

5153.9006 -- Format for a Bid Protest Action Report.

Bid Protest Action Report

(RCS DD-DR&E(AR)1669)

Protester: _____

Protest number: _____

Protest Forum (GAO/AGENCY): _____

Has there been a FOIA request or Congressional, OSD, HQDA, media, or other high level interest in any aspect of the protested acquisition or action (including the time period prior to any protest)?

Circle One: Preaward/Post Award Negotiated/Sealed Bid

Best Value: Yes No

Description of item or service:

Solicitation No:

Contract No:

Awardee:

Award Date: _____. Award Amount:

Estimated Amount (if preaward):
(Do not round off/abbreviate dollar amounts)

Stop Work? Yes No If Yes, date issued:

Attorney assigned to the protest (include phone):

Contracting Officer (include phone):

Lessons Learned and legal/acquisition costs are to be submitted by letter covering a copy of decision.

5153.9007 -- Format for the Quarterly Bid Protest Analysis Report.

Quarterly Bid Protest Analysis Report

(Separate Report for GAO Protests)

For The Period Covering:

1. Protests filed this quarter:
 - a. Total number:
 - b. Numbers filed by Major Command/Major Subordinate Command (HCAs)

HCA No.

2. Number of protests sustained/granted in this quarter:
3. Costs:

- a. Costs and fees awarded by GAO to protester:
- b. Dollar value of award:
 - (1) Preaward protests:
 - (2) Postaward protests:
- 4. Lessons Learned, Issues and Trends, Divergence from Precedent. Provide a copy of all decisions for sustained protests along with the lessons learned.

5153.9009 -- Withdrawal of Approval of Property Control System.

(Official Letter Head)

Office Symbol

Contractor's Name and Address

Government contract (insert contract number) requires (insert contractor's name) to establish and maintain, in accordance with FAR Subpart 45.5 and DFARS Subpart 245.5, a system to control, protect, preserve, and maintain Government property in your possession. The applicable provisions of the referenced contract provide that failure of the contractor to maintain and administer an acceptable program or system shall be presumed to be a failure resulting from willful misconduct or lack of good faith on the part of the contractor's managerial personnel.

The Property Administrator, by letter dated (insert date) gave notification that (insert contractor's name) system for the maintenance, protection, preservation, and control of Government property was reviewed and found not to meet the requirements of FAR Subpart 45.5 and DFARS Subpart 245.5 in the following respects:

(list all deficiencies)

By letter of (insert date) you were advised that approval of the property control system would be withdrawn unless the noted deficiencies were corrected by (insert date). As of this date, these corrections have not been accomplished. This undue delay in complying with your contractual requirements concerning Government property and your continued delay in rectifying noted deficiencies indicate a lack of concern by (insert contractor's name) managerial personnel. Therefore, the approval of your Property Control System is withdrawn as of (insert date). As a result of this action, (insert contractor's name) shall be liable for any loss or damage to the Government property occurring after receipt of this notice in accordance with the provisions of the contract.

A copy of this letter is being furnished to the Chief of the Contracting Office. Your failure to maintain an acceptable property control system could adversely affect future

recommendations for the award of contracts. Restoration of approval of your property system is dependent upon the correction of the above listed deficiencies to the satisfaction of the contracting officer.

Sincerely,

(Signature)
Contracting Officer

(Note: Send by registered or certified mail.)

APPENDIX AA—RESERVED

AFARS -- Appendix BB

Management Control Evaluation Checklist

Part 1 -- General

- | | |
|--------|---------------|
| BB-100 | Function. |
| BB-101 | Purpose. |
| BB-102 | Instructions. |
| BB-103 | Superseded. |

Part 2 -- Test Questions

- | | |
|--------|---|
| BB-200 | Event Cycle 1: Management of the Acquisition Function. |
| BB-201 | Event Cycle 2: Presolicitation. |
| Bb-202 | Event Cycle 3: Solicitation, Evaluation, and Award. |
| BB-203 | Event Cycle 4: Contract Administration |
| BB-204 | Event Cycle 5: Special Acquisition Situations and Requirements. |

Part 1 -- General

BB-100 -- Function.

The function covered by this checklist is Contract Office Management.

BB-101 -- Purpose.

The purpose of this checklist is to assist managers at all levels in evaluating compliance with the key management controls listed below. It is not intended to cover all controls.

BB-102 -- Instructions.

Answers must be based on actual testing of key management controls (e.g., document analysis, direct observation, sampling, simulation, other). Answers, which indicate deficiencies, must be explained and corrective action indicated in supporting

documentation. The AFARS provide the policy guidance and prescribed procedures for nearly all aspects of the contracting process, therefore it is not reasonable, nor possible to include a test question for each element in this management control process. For this reason the checklist is not intended to be all-inclusive and should be supplemented to include areas specific to each contracting activity (e.g., Major Systems, Contingency Contracting, etc.). Supplemental questions should be geared towards identifying potential problem areas in order to correct/improve the processes before they are raised, or before they become systemic. Formal evaluations of key management controls must be conducted at least once every five years (AR 11-2).

BB-103 -- Superseded.

This checklist replaces the 1996 edition contained in Appendix DD -- Management Control Evaluation Checklist.

Part 2 -- Test Questions

BB-200 -- Event Cycle 1: Management of the Acquisition Function

Step 1: Acquisition Activity Procedures and Functions.

- a. Are mission and function statements clear and accurate?
- b. Is the contracting office located at a level in the organization where undue pressure will not be placed on contracting personnel?
- c. Are there current published standard operating procedures (SOPs) that govern operations of the organization (i.e., security, visitors, etc.)?
- d. Are goals and metrics in place and routinely used to assess progress?
- e. Is the contracting office currently in compliance with the paperless contracting mandate, for electronic transaction of, requirements handoff; solicitations; proposal receipt; evaluation; awards/modifications; and payment?

Step 2: Requiring Activity Coordination.

- a. Are requiring activities advised of the lead times necessary to initiate and complete the contractual obligation of funds?
- b. Is economic purchase quantity data obtained and shared (when appropriate) with the cognizant inventory manager or with requiring activities (FAR 7.204)?
- c. Is teaming a routine practice in preparing contract packages and program strategies?

- d. Are Integrated Product Teams utilized to facilitate the decision making process whenever practical?

Step 3: Office Automation.

- a. Is there a single point of contact in the office for managing electronic business initiatives?
- b. Are procedures established regarding documentation and reporting problems with electronic business initiatives?

Step 4: Staffing, Facilities, and Training.

- a. Is the staffing in contracting offices adequate to support the mission without excessive use of overtime or the addition of temporary employees?
- b. Are job descriptions in the contracting office sufficient to ensure the recruitment and retention of employees with adequate skill levels?
- c. Is the contracting office-working environment (i.e., office space, heating/cooling, lighting, noise levels, etc.) in accordance with space management regulations?
- d. Is the number and condition of office business machines (i.e., copiers, datafax, computers, and class "A" telephone lines) adequate?
- e. Are the Individual Development Plans (IDPs), job descriptions and standards current and appropriate for the mission?
- f. Is the training received by employees (both formal classroom training and informal on-the-job training) timely, adequate, and appropriate for the specific level of certification?

Step 5: Acquisition Reports and Reviews.

- a. Do management and contracting functions of the organization and its activities receive management reviews?
- b. Are DD Forms 350, Individual Contracting Action Reports, prepared in a timely manner, verified, and submitted for each applicable contractual action (DFARS 204.670-3)?
- c. Are DD Forms 1057, Monthly Contracting Summary of Actions, inclusive of external orders and applicable purchase card transactions prepared in a timely manner, verified, and submitted as required (DFARS 204.670-3)?
- d. Are DD Form 1547, Record of Weighted Guidelines Application, prepared in a timely manner, verified, and submitted as required (DFARS 215.404-70)?

- e. Are Status Reports on Specified Contract Audit Reports, required by DODD 7640.2, prepared in a timely manner, verified, and submitted as required (AFARS 5115.490-3)?

Step 6: Social and Economic Goals.

- a. Does the contract file reflect the timely receipt, evaluation, and approval of required subcontracting plans (AFARS 5119.705-4)?
- b. Do contracting officers make a reasonable effort to assist SADBUs in identifying requirements suitable for possible award under the 8(a) Program (AFARS 5119.803(b))?
- c. Are contracting officer decisions or recommendations on a particular acquisition coordinated with the SADBUs specialist on DD Form 2579 (DFARS 219.201 (d) (9)(B))?
- d. Are the benefits of bundling contracts quantified and substantiated (DFARS 207.107)?

Step 7: Standards of Conduct.

- a. Is the required ethics training presented at least annually?
- b. Are contractors made aware of their responsibility to maintain a suitable system of internal controls to avoid improper business practices (DFARS 203.7000)?

BB 201 -- Event Cycle 2: Presolicitation

Step 1: Initial purchase tasking receipt and review.

- a. Do the purchase requests received adequately describe the requiring activities' needs, provide for identification and accountability control? Are they adequately funded, signed, dated, approved by appropriate persons and contain supporting documents, if required?
- b. Do the purchase descriptions or performance work statements received describe requirements that are appropriate for this contracting office to purchase? Should another contracting office/activity make the purchase?
- c. Are descriptions of the Government's needs stated in terms sufficient to conduct market research (FAR 10.002)?
- d. Has market research been conducted to determine if commercial items or non-developmental items are available to meet the Government's needs or could be modified to meet the Government's needs (FAR 10.002(b))?

- e. Does the Independent Government Estimate (IGE), if required, appear reasonably accurate and complete?
- f. Do the blue prints and drawings, if required, appear reasonably accurate, complete and can be provided electronically?
- g. Are the purchase requests for items delivered after the fact (unauthorized commitments) processed according to ratification procedures (FAR 1.602-3 and AFARS 5101.602-3)?
- h. Are established procedures followed whereby the chief of the contracting office regularly monitors the backlog and age of purchase requests or directives that remain “in process”?

Step 2: Acquisition method selection and planning.

- a. Are requirements placed as orders against applicable, existing “open ended” agreements or contracts rather than used as the bases for creating a new solicitation or purchase order?
- b. Are “Lessons Learned” during the previous year(s) considered in the preparation of a new solicitation to fill recurring annual requirements? (That is, are previously erroneous estimates, descriptions, and assumptions corrected rather than repeated?)
- c. Is the type of contract selected the result of analyzing the requiring activity’s requirements (i.e., Performance Based, not merely repeating the last selection for a similar requirement) and determining what would promote the Government’s interests (FAR 16.102)?
- d. Are acquisition plans:
 - 1. Developed when required (DFARS 207.103)?
 - 2. Sufficiently complete (DFARS 207.105)?
 - 3. Timely Updated (AFARS &.103(e)?
- e. Does the request for approval to use an Undefined Contractual Action (UCA) adequately justify the urgency to begin performance prior to definitization, contain an adverse impact on mission statement, and has it been authorized (DFARS 217.7404-1)?

Step 3: Competition Considerations.

- a. Is the urgency exception to full and open competition being properly applied and not just based on a high priority purchase request or backordered requisition (FAR 6.302-2)?

- b. Are solicitations based on the industrial mobilization exception limited to only the minimal sustaining rate for mobilization (FAR 6.302-3(b)(1)(iii))?
- c. Are justifications for other than full and open competition (including amendments to justifications) approved in writing at the appropriate level (FAR 6.304)?
- d. Are solicitations based on the national security exception to full and open competition legitimately justified (FAR 6.302-6)?
- e. Are orders issued, under multiple delivery order contracts or multiple task order contracts, giving all awardees a fair opportunity to be considered for each order in excess of \$2,500 (FAR 16.505)?

Step 4: Solicitation preparation and review.

- a. Do solicitation(s):
 - 1. Conform with the Uniform Contract Format, if applicable (FAR 14.201-1 or FAR 15.204-1)?
 - 2. Forms and clauses conform to the FAR or DFARS or have deviation approval (DFARS 201.402(3))?
 - 3. Requiring a legal sufficiency review prior to issuance, receive the required review (AFARS 5101.602-2 (c) (iv)).
- b. Do the Instructions, Conditions and Notices to Offerors (when appropriate) specify in sufficient detail the format and structure (i.e. size print, numbering of pages, etc.) with which each offer is expected to comply?

Step 5: Solicitation public notices and announcements.

- a. Are solicitation notices publicized:
 - 1. To the Army Single Face to Industry and FEDBIZOPS pages?
 - 1. Using the appropriate method (Commerce Business Daily, Army Single Face to Industry, public posting, etc.)?
 - 2. For the appropriate number of days?

BB 202 -- Event Cycle 3: Solicitation, Evaluation, and Award.

Step 1: Solicitation distribution, amendment, and cancellation:

- a. Are solicitation mailing lists established and maintained when electronic commerce techniques are not employed (FAR 14.205)?
- b. Is the publication, “Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs”, checked before placing vendors on the solicitation mailing list?
- c. Are appropriate verification of the contractors’ registration in the Central Contractor Registration (CCR) completed prior to award of contracts (DFARS 204.73 & 52.204-7004)?

Step 2: Bid opening and proposal closing:

- a. Are bids received prior to bid opening kept secure in a locked bid box or safe (FAR 14.401)?
- b. Are the withdrawals of a bid before the exact time set for opening bids accomplished according to FAR requirements (FAR 14.303 (b))?
- c. Are bid opening postponements limited to only justifiable situations (FAR 14.402-3)?
- d. Do bid opening officers follow bid opening rules and procedures (FAR 14.402)?
- e. Are procedures followed on the receipt and handling of proposals and quotations (FAR 15.207)?
- f. Are procedures followed on the disclosure and use of information in the proposals (FAR 3.104-5)?

Step 3: Responsiveness and certifications.

- a. Are only those bids that comply in all material respects with the Invitation for Bids (IFB) considered for award (FAR 14.301)?
- b. Are appropriate certification and representations required by the solicitation provided by the offeror prior to award?

Step 4: Mistakes and protest resolution.

Do contracting officers consider, resolve, or forward, as appropriate, all protests filed that relate to either their solicitations or procedures (FAR 33.102)?

Step 5: Technical Evaluation.

Are the technical factors developed specifically for each acquisition, i.e., technical approach, management approach, experience and personnel qualifications?

Step 6: Cost evaluation.

a. Is the relative importance between cost or price and the non-cost factors reflected in both the solicitation and weights or priority statements in source selection plan?

b. Is cost evaluated in every source selection (FAR 15.304 (c) (1))?

Step 7: Past Performance Evaluation:

Is past performance being evaluated as appropriate, or the file documented by the contracting officer (FAR 15.304 (c)(3))?

Step 8: Responsibility determination and certification of competency.

Do contracting officers place the required written determination of nonresponsibility in the contract file when rejecting prospective offerors as nonresponsible (FAR 9.105-2 (a))?

Step 9: Obtaining approvals, congressional notices, and business clearances prior to award.

a. Do the contract files reflect the obtainment of appropriate award approvals and signature authorities?

b. Are public announcements and the release of contract award information in compliance with regulatory requirements (FAR/DFARS/AFARS 5.303)?

Step 10: Contract distribution, synopsis, and notice of award.

a. Are contract awards synopsized as required in the Commerce Business Daily (FAR 5.301)?

b. Are steps taken to ensure that the notice of award is received in a timely manner, particularly where the successful offeror must “mobilize” subcontractors and equipment?

c. Does the UCA definitization schedule contain all FAR 16.603-2 © and DFARS 217.7404 requirements, a ceiling not to exceed price, and appropriate contract clauses (FAR 16.603, DFARS 216.603-4, DFARS 217.7406)?

BB 203 -- Event Cycle 4: Contract Administration

Step 1: Functional representatives’ responsibilities and limitations.

a. Are qualified individuals selected as CORs (DFARS 201.602-2)?

b. Do CORs’ written designations clearly indicate their authority and limitations?

- c. Are inspectors, functional managers, and others routinely involved in performing contract administration functions, advised of their duties and responsibilities in contract administration?
- d. Do delegations of the contract administration functions normally include the authority to deobligate excess funds (FAR 4.804-5 and 42.302 (a)(70)).
- e. Have the Contracting Officer Records and Ordering Officer Records been validated every 12 months to ensure compliance with the terms of the contract? (AFARS 5101.602-2)

Step 2: Postaward orientation conferences.

Is consideration given to the need for postaward orientation conferences to foster a mutual understanding of the contractual agreement and the responsibilities assigned (FAR 42.502)?

Step 3: Contract modifications.

- a. Is legal counsel requested to make a legal sufficiency determination prior to effecting a supplemental agreement?
- b. Is a deviation approval requested when a clause other than a standard clause is to be incorporated into a supplemental agreement and legal counsel review obtained?
- c. Are requiring activities prevented/prohibited from making changes to contracts and retroactively processing them through the contracting officer?
- d. Are change orders only issued for work within the scope of the contract (FAR & DFARS 43.2)?

Step 4: Government property administration.

- a. Are contractors required to publish a property control system describing the procedures and techniques to be used in managing Government property (unless the Government Property Administrator determines it unnecessary)?
- b. Is regulatory guidance followed to determine contractor liability should Government property become lost, damaged, destroyed or unreasonably consumed (FAR 45.504)?
- c. Has it been determined to be in the best interest of the Government to provide additional Government property beyond that required under contract?

Step 5: Quality assurance.

- a. Are nonconforming supplies or services offered to the Government rejected except as provided in applicable regulations (FAR 46.407)?
- b. Is contractor performance of service or commercial activity contracts monitored according to established surveillance plans?

Step 6: Delinquency Actions and Terminations.

- a. Do contracting officers take timely action to alleviate or resolve delinquencies?
- b. Do contracting officers obtain legal counsel and technical advice prior to taking action when a default termination is being considered (FAR 49.402-3)?
- c. Are excess funds from terminated contracts deobligated by the responsible contracting officer (i.e., PCO, ACO or TCO) in a timely manner?
- d. Are negotiation settlements promptly scheduled and audit reviews and negotiations tracked to ensure prompt settlement of termination actions (FAR 49.101(d))?

Step 7: Defense Contracting Audit Agency (DCAA) audits on cost reimbursement contracts.

- a. Are determinations regarding the allowability of incurred cost on cost reimbursement contracts consistent with the factors to be considered in determining allowability (FAR/DFARS part 31)?
- b. Are final cost determinations that are inconsistent with the auditor's advice supported by a memorandum in the contract file describing the pertinent events and factors considered in reaching the decision?
- c. Are the reimbursements due the Government after final audit promptly processed for collection?

Step 8: Receiving reports, acceptance, final payment, contract completion and contractor evaluation.

- a. Are decisions to accept, or reject supplies offered, or services performed, documented and distributed in a timely manner?
- b. Are all contractual claims and obligations satisfied on physically completed contracts prior to contract closeout?
- c. Are contractor performance assessment reports (PARs) being prepared (AFARS 42.15)?
- d. Are contract administration offices initiating administrative closeout of the contract after receiving evidence of its physical completion (FAR 4.804-5)?

BB-204 -- Event Cycle 5: Special Acquisition Situations and Requirements

Step 1: Simplified Acquisition Procedures.

- a. Is a source list being maintained (FAR 13.102)?
- b. Are files reviewed to ensure that:
 - 1. Requirements are not split or manipulated to avoid the Simplified Acquisition Threshold (FAR 13.003 (c))?
 - 2. Related items are consolidated when practical and advantageous (FAR 13.101 (b))?
 - 3. Unpriced orders contain appropriate monetary limitations (FAR 13.302-2 (c))?
 - 4. Price reasonableness is adequately documented (FAR 106-3)?
- c. Are existing agreements (i.e. Federal Supply Schedules, Blanket Purchase Agreements, other activity/agency contracts etc.) used?
- d. Are recurring orders evaluated at least annually to determine the appropriateness of either establishing, updating or canceling blanket purchase agreements (FAR 13.303-2 & 13.303-6)?
- e. Are ordering officers:
 - 1. Appointments limited to those situations essential for the efficient operation of the contracting mission (AFARS 1.602-2-91 (b))?
 - 2. Activities physically inspected or reviewed, at least once each year (AFARS 1.602-2-91 (c) (2))?
- f. Government Credit Card purchases:
 - 1. Are they controlled by established internal operating procedures (AFARS 13.9002 (a))?
 - 2. Are they in compliance with restrictions and controls (AFARS 13.9003)?
 - 3. Are procedures in place to ensure bills are paid promptly?
 - 4. Are purchase cards being utilized as a payment vehicle on contracts over \$2,500 (when appropriate)?

Step 2: Construction Requirements

- a. Are bid guarantee and bonding requirements in compliance with the guidance at FAR 28.101 and DFARS 28.102?
- b. Is a release of all claims or liens against the Government obtained prior to final payment (FAR 52.232-5)?

Step 3: Job Order Contracting (JOC)

- a. Do UPB prices (including contractual changes to UPB prices) exclude contractor mobilization, overhead, administration and profit?
- b. Are negotiated prices for non-prepriced items fair and reasonable?

Step 4: Architect-Engineers (AE) Requirements.

- a. Are the qualification data files on AE firms kept current (to include review and update at least once a year) (FAR 36.603 (d))?
- b. Are the required clauses included in AE contracts to protect the interests of the Government (FAR 36.609)?
- c. Are the reasons for recovering or not recovering costs from an AE firm whose design deficiencies contributed to a construction contract modification, in writing and in the contract file (FAR 36.608)?

Step 5: Services and Performance Based Contracting.

- a. Are formal measurable (i.e. in terms of quality, timeliness, quantity, etc.) performance standards and surveillance plans developed to monitor the services to be performed (FAR 39.103)?
- b. Are contractor employee complaints regarding wage rates, overtime, and related matters, under the Service Contract Act referred to the Department of Labor for investigation?

Step 6: Acquisition of Information Technology.

- a. Are the modular contracts for IT awarded within 180 days after the solicitation is issued and delivery scheduled to occur within 18 months (to the maximum extent practicable) (FAR 39.103 (e))?

Step 7: Major System Acquisitions.

- a. Does the system acquisition objective promote innovation and full and open competition (FAR 34.002 (a))?

- b. Is effective competition between alternative system concepts and sources sustained for as long as it is beneficial (FAR 34.002 (b))?
- c. Are the Formal Source Selection procedures described in the Army manual/guidance being applied?

Step 8: Research and Development Requirements.

- a. Are work statements adequately tailored by technical and contracting personnel to obtain the desired degree of flexibility for contractor creativity and the objectives of research and development (FAR 35.005 (a))?
- b. Are recommendations of technical personnel considered by the contracting officer prior to selection of a contract type to fit the research work required (FAR 35.006 (b))?
- c. Does the evaluation and award of research contracts consider the prohibition against obtaining capabilities that exceed those needed for successful performance (FAR 35.008 (a))?
- d. Do those research contracts with educational institutions or nonprofit organizations requiring a named principal; investigator or project leader, contain sufficient controls to ensure an adequate degree of involvement by the named individual (FAR 35.015(a)(1))?

Step 9: Undefined Contract Actions (UCAs)

- a. Has the statutory limitation on obligation and expenditure of funds prior to definitization been adhered to, e.g., not more than 50 percent of ceiling price or 75 percent with receipt of a qualifying proposal (DFAR 217.7404-4)?
- b. Are UCAs definitized in a timely manner, e.g., within 180 days or before 50 percent of the not to exceed price is expended (75 percent with receipt of a qualifying proposal) or, if extended, 180 days after contractor submission of a qualifying proposal (DFAR 217.7404-3 9a))?
- c. If the contractor did not submit a qualifying proposal in accordance with the definitization schedule (within 180 days or prior to the date on which the amount of funds spent under the contract action is equal to more than 50 percent of the not-to-exceed price), did the contracting officer suspend or reduce progress payments under FAR 32.503-6 or take other appropriate action (DFARS 217.7404-3).

Step 10: Financial and Cost Aspects of Other Transactions for Prototype Projects.

- a. Are the terms and conditions of the “Other Transaction” clear, and do they protect the Government’s interests?

- b. When an “Other Transaction” has cost reimbursable features using payable milestones, does the “Other Transaction” address the procedures for adjusting the payable milestones based on actual expenditures?
- c. To ensure advance payments do not result under an “Other Transaction” with cost reimbursable features, does the “Other Transaction” require the contractor to submit a report of actual expenditures as a condition for milestone payment? Does the “Other Transaction” stipulate that the milestone payment will not exceed actual expenditures?
- d. When an “Other Transaction” has firm-fixed price characteristics with payable milestone provisions, are the payable milestone values commensurate with the estimated value of the milestone events?
- e. When an “Other Transaction” requires the submittal of technical, business or annual reports, has the Agreements Officer considered whether these reports are important enough to warrant establishment of separate milestones, or if report requirements should be incorporated as part of a larger payable milestone?
- f. Does the “Other Transaction” require the delivery of technical reports to the Defense Technology Information Center (DTIC), upon completion of the research and engineering project (per DoD Instruction 3200.14)?
- g. If the contractor fails to comply with the terms of the “Other Transaction”, has the Agreement Administrator taken timely, appropriate action to remedy the situation?

Step 11. Financial and Cost Aspects for Technology Investment Agreements (TIAs). (A TIA is defined as a class of assistance instruments that may be used to carry out basic, applied, and advanced research projects when it is appropriate to use assistance instruments, and the research is to be performed by for-profits or by consortia that include for-profits firms, particularly firms that have done business with the Government.)

- a. If a TIA provides for payment to be made based on payable milestones, are these payable milestones based on observable, technical progress?
- b. At the completion of each payable milestone or upon receipt of the quarterly business status report, has the Agreements Officer compared the total amount of project expenditures with the amount of payments for completed milestones? Has the Agreements Officer adjusted future payable milestones (as needed) to closely match payments to the recipient’s cash needs for the project?
- c. For TIA’s which use payable milestones, has the Agreements Officer included a term or condition in the award document or otherwise required the recipient to maintain in an interest-bearing account any payable amounts received in advance of needs to disburse the funds for program purposes?—Unless one of the following conditions applies:

1. The recipient receives less than \$120,000 in Federal awards per year;
 2. The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on such cash advances;
or
 3. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources for the project.
- d. Has the Agreements Officer forwarded any annually earned interest received from a recipient under a TIA to the responsible payment office for return to the Department of the Treasury's miscellaneous receipt's account?

AFARS -- Appendix CC

Army Procurement Management Assistance Program (PMAP)

Part 1 -- Introduction

CC-100 -- Purpose.

This Appendix prescribes policy, responsibilities, and procedures for the Department of the Army (DA) PMAP.

CC-101 -- Objectives.

The PMAP will --

Provide management consultant services for the Army to enhance the procurement process. Provide assistance and assessment of the effectiveness and efficiency of Army-wide procurement through outcome based analysis, measuring actual achievement against stated goals.

- (c) Communicate the results of assistance, assessment and analysis throughout the Army.

CC-102 -- Applicability.

This Appendix applies to all elements of the Army (including the National Guard Bureau) having contracting missions (regardless of funding source, type of commodity, or service).

Part 2 -- PMAP Policy and Philosophy

CC-200 -- Policy.

The DA, at every level of management, shall review, assess, analyze, and improve procurement operations and management for effectiveness and efficiency.

CC-201 -- Philosophy.

The PMAP will provide an interactive framework emphasizing communication and assistance throughout the Army. Analysis, identification of best practices, and other information will allow the assessment of the state of Army procurement operations, organization and management and provide a forum for solution and development of issues. The thrust of the PMAP will be to effect change for continual improvement. Compliance review and reporting by DA is not its objective.

Part 3 -- Responsibilities

CC-301 -- Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(AL&T)).

The ASA(AL&T) is the Senior Procurement Executive for the Army, and is responsible for all procurement and contracting functions of the Army to include agency head authority for contracting matters; delegation of contracting authority; designation of contracting activities; promulgating Army contracting policies and procedures (Army Federal Acquisition Regulation Supplement (AFARS)); and procurement management assistance and review activities. This includes initial development, implementation and promulgation of acquisition, procurement and contracting policies, procedures, and good business practices.

CC-302 -- Deputy Assistant Secretary of the Army for Procurement (DASA(P)).

The DASA(P) is responsible for providing responsive, responsible acquisition management and execution of procurement functions Army-wide, and issuing guidance, on a periodic basis, on areas of special interest to the Army Senior Leadership. This includes providing policy guidance on procurement operations, procurement support of weapon systems acquisition, and industrial base operations. The DASA(P) will also provide oversight of the organizations, resources, policies and procedures related to the management and execution of Army procurement world-wide; serve as the Army lead for implementation, management, and oversight of acquisition initiatives and excellence; manage the Army's contracting and acquisition career programs; and insure competition and all special interest and socio-economic program goals are supported.

CC-303 -- Directorate of Acquisition Reform (SAAL-PR), Office of the DASA(P).

SAAL-PR is responsible for the effective administration and conduct of the PMAP. To this end, SAAL-PR will --

- (a) Provide procurement management consulting services to the Army.
- (b) Analyze and assess the effectiveness and efficiency of Army procurement programs and operations.
- (c) Identify and communicate best practices, lessons learned, issues, and information.
- (d) Oversee Army-wide execution of the PMAP by Heads of Contracting Activity (HCA).
- (e) Periodically provide PMAP guidance to HCAs, including DASA(P) special areas of interest.
- (f) Be an advocate of the field for the coordination and resolution of issues at DA or higher levels.

CC-304 -- Heads of Contracting Activity.

HCA's shall --

- (a) Develop and execute a program for procurement management review (PMR) and oversight, to ensure fulfillment of HCA responsibilities for a responsive and cost-effective contracting system, and to review contracting compliance with FAR, DFARS, AFARS, Command Supplements, and DA Policy, consistent with DA PMAP objectives and DASA(P) special areas of interest.
- (b) Identify and communicate procurement best practices, lessons learned, issues, and information to SAAL-PR.

Part 4 -- Procedures

CC-400 -- Scheduling.

Procurement Management Assistance (PMA) will be conducted on a planned basis, when requested, or when directed by higher authority. At a minimum, PMA's/Procurement Management Reviews will be conducted on every contracting activity (to include subordinate contracting offices), regardless of level at least once every 24 months. An extension to 36 months may be granted on a one time basis when circumstances justify/warrant it, and provided the written approval of such extension is obtained from the Deputy Assistant Secretary of the Army (Procurement). This approval may not be delegated.

CC-401 -- Types of Procurement Management Assistance.

The PMAP is a multi-tiered program that includes --

- (a) PMA visits by the Office of the Deputy Assistant Secretary of the Army (Procurement) to Offices of Principal Assistants Responsible for Contracting (OPARC).
- (b) Participation, from a PMA perspective, in OPARC PMRs (or contract management reviews (CRs)) of contracting offices.
- (c) Special assistance, review and assessment, Army-wide, as required.
- (d) Surveys.

CC-402 -- Approach of Procurement Management Assistance.

- (a) PMA will be collaborative and will emphasize effectiveness of strategic planning, identification and effectiveness of metrics, and the flow of information

among organizations. Current improvements in contracting policies and procedures will be addressed.

(b) PMA will, in a consultant capacity, provide for the exchange of information and advice on lessons learned, best practices, mitigation of barriers to effective change, and opportunities for continuous improvement.

(c) Participation by the Office of the Deputy Assistant Secretary of the Army in OPARC PMRs/CMRs will address PMAP objectives and enhance the OPARC team in achieving its responsibilities pursuant to this Appendix.

CC-403 -- Preparation for Procurement Management Assistance.

Procurement organizations will be notified by the Office of the Deputy Assistant Secretary of the Army before planned PMA visits. They will be asked to provide (in advance) statistics, orientation data, and particular areas of concern on which the activity would like to place special emphasis.

CC-404 -- Results of Procurement Management Assistance.

(a) Each PMA will be summarized in a report containing observations, assessments, analysis of issues, and recommendations as appropriate.

(b) Information from PMA will be disseminated on a quarterly basis utilizing various mediums of communication, such as the Internet with World Wide Web, E-mail, newsletters, memoranda, conferences, special meetings, integrated process teams, and other channels.

CC-405 -- Results of Field Reviews.

OPARCs shall provide to SAAL-PR copies of all PMR/CMR reports and associated analyses of subordinate contracting offices.

AFARS -- Appendix DD

Subcontracting Plan Evaluation Guide

June 1, 1996

Part 1 -- Introduction

DD-100 Purpose.

The guide provides a methodology for uniform and consistent evaluation of subcontracting plans within the Army. It is designed to facilitate compliance with the mandates of Public Law to increase opportunities for small and small disadvantaged businesses.

DD-101 Applicability.

Except for subcontracting plans for commercial items, use this guide to review all subcontracting plans, including those submitted in response to the conditions described in FAR 19.705-2(d) and DFARS 219.705-2(d). See 19.708(b)(1) for special notices to be inserted in the solicitation regarding submission of subcontracting plans. A copy of the completed evaluation shall be included in the contract file.

DD-102 Goals.

Contracting officers must place special emphasis on negotiating reasonable goals in subcontracting plans. The goals must be realistic, challenging and attainable. The plan must demonstrate a real commitment to, and an active involvement in, providing subcontracting opportunities for small and small disadvantaged businesses.

DD-103 Scoring.

Score subcontracting plans in the context of the particular procurement. For instance, in smaller dollar value contracts, it may be impracticable or not cost effective for offerors to take the type of actions that may be appropriate in contracts for larger dollar values. However, in such cases, offerors must still address each element of the guide and discuss what they intend to do regarding each element. Contracting officers shall then assign appropriate point scores.

DD-104 Modification of Guide.

The evaluation guide and scoring system shall not be modified without the approval of the PARC. This approval authority may not be delegated.

DD-105 Use of Preaward Surveys.

For contracts administered by the Defense Contract Management Agency (DCMA), information needed to assess contractor compliance with subcontracting plans in current and previous contracts may be obtained by requesting a preaward survey in accordance with FAR 9.106.

Part 2 -- Scoring System

Point Points

Range Assigned

1. Policy statement or evidence of internal guidance to company buyers recognizing commitment to Pub.L. 99-661, Section 1207, and Pub.L. 100-180, Section 806.

0 No written policy statement in plan.

1-2 Plan includes a general policy, but no evidence of recognition of special emphasis being placed on subcontracting with SDBs, HBCUs and MIs as a result of Pub.L.s.

3-5 Definitive corporate and management commitment evidenced in individual plan and master plan by specifically referencing the Pub.L.s.

2. Efforts to broaden SB and SDB active vendor base. 0-10 (FAR 19.704(a), 52.219-9(d), DFARS Subpart 219.5, 219.704(a)(1), 219.705 and 252.219-7003)

0 Description of efforts merely parrots requirements of FAR to maintain listing of vendors.

1-2 Contains evidence that effort is directed at increasing subcontracts to SBs and SDBs for non-complex and general housekeeping supplies or services normally awarded to firms already in existing vendor base.

3-10 Addresses efforts to increase the number of SB and SDB sources awarded subcontracts, establishes plans to use competition restricted to SDBs and gives details about how plans to use competition restricted to SDBs will be accomplished. (DFARS 219.705-4 and Subpart 219.5)

Note: After scoring the plan to this point, if zero points have been assigned for Element 2, proceed to Item 3, Outreach. If one or more points have been assigned for this Element 2, proceed to evaluation of the

subelements labeled “minus 2” and “minus 3” to determine if points assigned so far must be reduced. Do not reduce points already assigned to less than zero. (No negative points are to be entered under “Points Assigned” for any Element.) These negative scores are additive; if both of the subelements apply, then minus five points are assessed to reduce points already assigned under this element 2.

minus 2 Includes efforts described above which rate 1-2 or 3-10 points but, when it would be appropriate, does not address effort to involve HBCUs and MIs in performing the contract for which the subcontracting plan is submitted. (DFARS 219.704(a)(1) and 219.705-4(d))

minus 3 Includes efforts described above which rate 1-2 or 3-10 points but does not address effort to identify and overcome obstacles which may prohibit award to HBCU and MI sources currently in vendor base.

Point Range Points Assigned

*3. Outreach (ongoing and planned actions) 0-10
(FAR 19.704(a), 19.705-4, 52.219-9(d) and
52.219-9(e), DFARS 219.705).*

0 No mention of outreach.

1-4 Describes efforts to work with organizations in FAR 52.219-9(d)(11)(iv) to identify potential sources for items not traditionally awarded to SB or SDB firms. (FAR 52.219-9(d)(11)(iv) and 52.219-9(e))

5-10 Indicates intent to conduct reviews to determine the competence, ability, experience and capacity available in SB or SDB firms and to provide technical assistance to SBs and SDBs or explains why such reviews or technical assistance are not appropriate. (FAR 19.705-4(c) and 52.219-9(e))

Note: After scoring the plan to this point, if zero points have been assigned for Element 3, proceed to Item 4, Description of supplies and services. If one or more points have been assigned for this Element 3, proceed to evaluation of the subelement labeled “minus 3” to determine if points assigned so far must be reduced. Do not reduce points already assigned to less than zero. (No negative points are to be entered under “Points Assigned” for any Element.)

minus 3 Fails to indicate the extent to which HBCU and MI participation will be considered and facilitated in performing the contract for which the subcontracting plan is submitted, or fails to indicate other efforts to increase

HBCU and MI participation in future DoD acquisitions. (DFARS 219.705-4(d))

Point Points

Range Assigned

4. Describes supplies and services to be subcontracted 0-10 and planned for subcontracting to SBs, SDBs, HBCUs and MIs. (FAR 19.705-4(d), 52.219-9(d)(3), 52.219-9(e) and DFARS 219.705).

0 No mention.

1-4 Generic list of routine supplies and services included in materials listing for the specific contract.

5-7 Indicates intent to review major product/system components and key project elements of R&D, construction, service and spare parts contracts for subcontracting to SBs, SDBs, HBCUs and MIs. (FAR 19.705-4(d)(3) and (4), 52.219-9(e)(1) and (2) and DFARS 219.705)

8-10 Substantive plan actually targets specific SBs, SDBs, HCBUs and MIs for review to determine their competence, ability, experience and capacity and identifies specific components or major portions of the acquisition for consideration of SB, SDB, HBCU or MI competition. Also, indicates intent to work with large business subcontractors for major subsystems or key project elements to ensure “flowdown” of this philosophy. (FAR 19.705-4(d) and DFARS 219.705)

5. Describes specific efforts, based on results of efforts 0-15 described in Elements No. 3 and No. 4 to ensure that SB, SDB, HBCU and MI concerns have equitable opportunity to participate in acquisitions. (FAR 19.704(a), 19.705-4, 52.219-9(d) and DFARS 219.705).

0 No mention.

1-4 Description of efforts merely parrots FAR 19.704(a)(3) and (6) and 52.219-9(d)(8).

5-8 Describes how the company intends to evaluate its own SB and SDB award performance and program effectiveness against the established goals, both company-wide and for the individual plan being

negotiated. (FAR 19.704(a)(1) and (6) and 52.219-9(d)(11)(v))

9-12 Includes SBs, SDBs, HBCUs and MIs by name as members of original team for producing specific major components or subassemblies, providing a major service or performing a significant portion of the effort. (DFARS 219.705-2(d))

13-15 Describes special efforts to establish long-range relationships with SBs, SDBs, HBCUs and MIs, including leader-follower techniques, when appropriate. (FAR 19.705-4(d)(4) and DFARS 219.705-2(d))

6. Development of percentage goal is based on planned 0-40 subcontracting which is challenging, yet realistic. (FAR 19.705-4(d), DFARS 219.704(a)(1) and 219.705-4).

0 Fails to include a specific goal for subcontracting with SBs, SDBs, HBCUs and MIs or proposes zero percent goal without substantive justification.

1-5 Sets small business goal of less than 10 percent and/or SDB/HBCU/MI goal of two percent or less with no significant justification.

6-10 Sets goals of less than 10 percent (SB) and 2 percent (SDB), but contractor shows evidence of reasonable effort, including use of set-asides, to involve Sbs, SDBs, HBCUs or MIs in non-traditional areas.

11-20 Sets goals of over 10 percent (SB) and 2 percent (SDB) and also identifies specific SB, SDB, HBCU or MI concerns planned to be subcontractors, including the item or service or effort to be subcontracted. Indicates extent to which firms have participated in proposal preparation or otherwise indicates extent to which subcontracting to these firms may reasonably be assured. Goals are realistic in view of actions stated in other portions of the plan and make-or-buy plan, if applicable.

21-30 Same as for 11-20 points, but proposed percent of goal is reasonable in comparison with prior experience, yet indicates reasonable effort to improve on past experience in terms of dollars, number of SDBs,

HBCUs, and MIs involved, and movement into area without previous SDB, HBCU or MI involvement.

31-40 Same as 21-30 points, but includes evidence that if SBs, universities or institutions other than HBCUs or MIs are performing on a major component or subassembly, providing a major service or performing on a key project element, SDBs, HBCUs and MIs will also be given an opportunity to perform. Also, the percentage of the SDB, HBCU, MI goal compares favorably with the percentage of SB goal, consistent with the Government-wide goals of 20 percent to SB with five percent to SDB, or is otherwise explained, and the plan includes a forecast for improvement. (The SB and SDB goals in the subcontracting plan should approximate the ratio between the SB and SDB Government-wide goals.)

7. Past performance. 0-10

Extent to which the company has historically been successful in establishing realistic, yet challenging, goals and achieving them. Consider DCMC comments on prime contractor's justifications for prior failure to achieve goals. To avoid penalizing the contractor when there has been no previous defense contract, assign 10 points. (FAR 19.705-4(d)(1) and (d)(2)(iii), 19.706 and DFARS 219.706).

8. Other regulatory and statutory requirements.

If any of the following are answered "NO," the plan is not acceptable and must be revised to comply prior to award:

Does the plan have --

A. A separate goal for SB and SDB? (FAR 19.704(a)(1) and FAR 52.219-9(d)(1) and (2))

YES NO

B. A separate goal for the basic contract and, if applicable, each option? (FAR 19.704(c))

YES NO

C. The name of the company employee responsible for administration of plan and employee's duties? (FAR 19.704(a)(2) and 52.219-9(d)(7))

YES NO

D. A statement affirming intent to comply with subcontracting “flowdown” provisions? (FAR 19.704(a)(4) and 52.219-9(d)(10))

YES NO

E. A statement affirming willingness to cooperate in studies and to provide reports? (FAR 19.704(a)(5) and 52.219-9(d)(10))

YES NO

F. A statement that indirect costs are either included or excluded from the proposed goals and, if included, how they will be prorated? (FAR 52.219-9(d)(6))

YES NO

G. A description of efforts to ensure that SBs and SDBs have an equitable opportunity to participate in the acquisition? (FAR 52.219-9(d)(8))

YES NO

H. A recitation of the types of records maintained to demonstrate procedures adopted to comply with the requirements and goal in the plan? (FAR 52.219-9(d)(11))

YES NO